

ORDINANCE NO. 3806-04

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, REPEALING AND REPLACING ARTICLE IX OF CHAPTER 78 TO BE REFERRED TO AS "THE CITY OF WEST PALM BEACH CABLE TELEVISION ORDINANCE"; REPEALING ORDINANCE NO. 3100-97 IN ITS ENTIRETY; PROVIDING A CODIFICATION CLAUSE; PROVIDING FOR AUTHORITY FOR CABLE TELEVISION SYSTEMS TO OPERATE, CONSTRUCT AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE RIGHTS-OF-WAY OF THE CITY OF WEST PALM BEACH, FLORIDA; PROVIDING PROCEDURES, REQUIREMENTS, AND FEES RELATING TO CABLE TELEVISION TO REFLECT CHANGES IN APPLICABLE LAW TO BETTER ENSURE THAT USE OF CITY STREETS BY CABLE SYSTEMS SERVES THE PUBLIC INTEREST; PROVIDING FOR CUSTOMER SERVICE REQUIREMENTS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, because of the enactment of certain amendments to the Communications Act of 1934 and amendments thereto including, but not limited to, the Telecommunications Act of 1996, judicial decisions, revisions to federal Communications Commission rules, revisions to State of Florida Statutes, and changes and developments in cable television technology, business, and services, the scope and substance of municipal regulatory authority over cable television franchises has been modified; and

WHEREAS, Adelphia Cablevision of West Palm Beach IV, LLC, a subsidiary of Adelphia Communications Corporation ("Adelphia") is the holder of a non-exclusive cable television franchise pursuant to Ordinance No. 1040-68 and amendments thereto and said Franchisee has requested renewal of its Franchise; and

WHEREAS, the City may determine that award of additional cable television Franchises are in the public interest; and

WHEREAS, the City Commission of the City of West Palm Beach, Florida, deems it necessary to amend the City Code of the City of West Palm Beach, Florida, by amending the Ordinance to take into account the afore-described changes and developments and to better ensure that use of City Streets by cable systems serves the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, THAT:

SECTION I. Creation. Sections 78-281 through 78-315 are hereby created as follows:

Section 78-281. Short Title.

This Ordinance shall be known and may be cited as The City of West Palm Beach Cable Television Ordinance.

Section 78-282. Definitions.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any Franchise Agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, as amended,

47 U.S.C. § 521 et seq., and as hereinafter amended (collectively the "Communications Act"), and, if not defined therein, their common and ordinary meaning.

(a) "Access Channel" means any channel on a Cable System set aside without charge by the Franchisee for public, educational and/or local governmental use.

(b) "Affiliate" means any person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

(c) "Applicant" means any person submitting an application as defined herein.

(d) "Application" means any proposal, submission or request to (1) construct and operate a Cable System within the City; (2) sell, assign or otherwise transfer a Franchise or transfer control of the Franchisee; (3) renew a Franchise; (4) modify a Franchise; or (5) seek any other relief from the City pursuant to this Ordinance, a Franchise Agreement, the Cable Communications Act, or other applicable law. An Application includes an Applicant's initial proposal, submission or request, as well as any and all subsequent written amendments or supplements to the proposal and relevant correspondence.

(e) "Basic Cable Service" or "Basic Service" means any service tier which includes the retransmission of local television broadcast signals, and public, educational, or governmental Access Channels.

(f) "Communications Act" means the Communications Act of 1934, and amendments thereto including, but not limited to Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, and the Telecommunications Act of 1996 as those Acts may hereinafter be amended.

(g) "Cable Service" means (a) the one-way transmission to Subscribers of (i) video programming service; or (ii) other programming service, and (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, or as otherwise permitted under applicable federal and state law.

(h) "Cable System," "Cable Television System," or "System," means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple Subscribers within the City. Such term does not include (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public rights-of-way; (iii) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on demand service; (iv) an open video system that complies with Section 653 of the Telecommunications Act of 1996; and (v) any facilities of any electric utility used solely for operating as an electric utility system. The foregoing definition of "Cable System" shall not be deemed to circumscribe the valid authority of the City to regulate the activities of any other communications system or provider of communications services or facilities as permitted by applicable federal or state law.

(i) "City" means the City of West Palm Beach, Florida, a municipal corporation of the State of Florida, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(j) "Control of a Franchisee or Applicant" means possession of the ability to direct or cause the direction of the management or policies of a Franchisee or Applicant, or the operation of a Franchisee's Cable System, either directly or indirectly, whether through ownership of voting securities, by contract or understanding, or in any other manner.

(k) "Fair Market Value" means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the Franchise itself.

(l) "FCC" means the Federal Communications Commission or any successor governmental entity thereto.

(m) "Franchise" means the non-exclusive right granted by the City to a Franchisee in a Franchise Agreement to construct, maintain and operate a Cable System to provide Cable Services under, on, and over Streets, roads and any other public ways, rights-of-ways, or easements within all or specified areas of the City. The term does not include any license or permit that may be required by this Ordinance or other laws, ordinances or regulations of the City for the privilege of transacting and carrying on a business within the City or for disturbing or carrying out any work on any Street.

(n) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth the terms and conditions under which the Franchise will be exercised.

(o) "Franchise Area" means the entire area within the legal boundaries of the City and such other areas as may hereinafter be annexed or incorporated by the City or, alternatively, that area designated in a Franchise Agreement.

(p) "Franchisee" means any person granted a Franchise pursuant to this Ordinance who has entered into a Franchise Agreement with the City.

(q) "Gross Revenues". As of the effective date of this Ordinance, the provisions of this definition are preempted pursuant to the Communications Service Tax Ch. 202, Florida Statutes and will remain preempted until such time as applicable law changes. Should applicable law change so as to allow the City to calculate Franchise fees as a percentage of Gross Revenues, Gross Revenues shall mean, unless prohibited by applicable federal or state law, or as otherwise provided in a Franchise Agreement, all revenues recognized according to generally accepted accounting principles (GAAP) generated by the Franchisee from the operation of the Cable System to provide Cable Services in the City. Notwithstanding anything to the contrary contained in this subsection, Gross Revenues include, but are not limited to, fees charged Subscribers for Basic Service; fees charged Subscribers for any optional, premium, per-channel or per-program service; fees charged Subscribers for any tier of service other than Basic Service; installation, disconnection, reconnection and change-in-service fees; late fees; leased access fees; and shall include the following services to the extent such services are considered Title VI services according to applicable law: revenue from Cable Service converters, Cable Service remotes, or any other Cable Service equipment rentals; revenues from cable guides; revenues from leases of the Cable System; advertising revenues allocable to the City based on a percentage of Subscribers in the City divided by

the Subscribers in the Cable System (such percentage shall then be multiplied by the total advertising revenue of the cable system to determine the allocable Gross Revenue stemming from advertising); and revenues from home shopping channels or other sources allocable to the City, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the Franchisee shall allocate the percentage of revenue to the City that is equivalent to the percentage of the Subscribers of the City divided by the total Subscribers for the allocable franchises within the zip code. Unless prohibited by applicable law, Gross Revenues shall be the basis for computing the Franchise fee imposed pursuant to Section 78-297 hereof. Gross Revenues shall not include revenues received from programmers and used by Franchisee to market, promote or advertise a programming service; any revenue received by Franchisee for payment in connection with PEG Access or facilities as required by Section 78-296 hereof; any taxes or fees on services furnished by the Franchisee that are imposed upon any Subscriber or user by the state, Palm Beach County, City or other governmental unit and collected by the Franchisee on behalf of such governmental unit and that the Franchisee passes on in full to the applicable authority. However, it is hereby expressly provided that Franchise fees shall be included in the calculation of Gross Revenues. Further, Franchise fees shall not be paid on Subscriber deposits unless and until such deposits are applied to a customer account for services rendered.

(r) "Institutional Network" means a communications system constructed; or operated by the Franchisee for the City, the transmissions on which are generally

available only to, and intended to be sent and received by, persons other than residential cable Subscribers generally.

(s) "Interconnection" means the electronic connection of two or more cable systems for the purpose of sharing Access Channel programming.

(t) "Law" means all duly enacted and applicable federal, state, County and City laws, ordinances, codes, rules, regulations and orders.

(u) "Leased Access Channel" means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C., § 532, for commercial use by persons unaffiliated with the Franchisee.

(v) "Overbuild" means a Cable System constructed to serve Subscribers in an area of the City actually served by an existing franchised Cable System.

(w) "Person" means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the City.

(x) "Service Tier" means a category of Cable Service provided by a Franchisee and for which a separate charge is made by the Franchisee.

(y) "State of the Art" shall mean that level of technical performance, equipment, components and cable services (without reference to the content of the cable service) which has been developed and demonstrated to be generally accepted and used in the cable industry, excluding "tests" involving new products offered for one year or less. Nothing herein shall be construed to require a Franchisee to employ any specific transmission technology or to carry any particular programming services.

(z) "Street or Streets" means the surface, the air space above the surface and the area below the surface of any public Street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the City holds any kind of property interest or over which the City exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a Cable System.

(aa) "Subscriber" means any person who lawfully receives Cable Service delivered over the Cable System. Any person who lawfully receives Cable Service but is not billed on an individual basis shall not be considered a Subscriber for the purpose of rate notification.

(bb) "Subscriber Base" means the total number of residential and commercial Subscribers within the City. For purposes of calculating Subscribers under bulk contracts, the Franchisee shall count each individual unit served as one Subscriber. Franchisee may use any lawful and reasonable equivalency measures provided it uses such measures uniformly for all franchise areas served by the Cable System, or as provided for in a Franchise Agreement.

(cc) "System Malfunction" means any Cable System equipment, facility or signal failure or malfunction that results in the loss of satisfactory service on one or more channels to one or more Subscribers. A malfunction is major if it affects two hundred (200) or more Subscribers.

(dd) "Transfer of a Franchise" means any transaction in which (1) any ownership or other interest in a Franchisee or its Cable System is transferred from one person or group of people to another person or group of people so that control of a Franchisee or control of Franchisee's Cable System is transferred; or (2) the rights and/or obligations held by a Franchisee under a Franchise Agreement are transferred or assigned to another person, group of people or entity. A transfer shall be considered "pro forma" only when it involves a transfer to a person, group of people or business entity that is a wholly owned or controlled affiliate or subsidiary of the Franchisee or Franchisee's parent entity and shall not result in a change in the ultimate parental control or ownership of the Franchisee.

(ee) "Two-Way Capability" means the incorporation into a Cable System of all appropriate design and engineering characteristics and features so that two-way transmission, including, but not limited to, addressability, over the Cable System can be implemented and activated.

(ff) "Video Channel or Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, including the associated audio signal, as television channel is defined by the FCC by regulation or otherwise.

Section 78-283. Intent and Purposes.

(a) It is the intent of the City and the purpose of this Ordinance to promote the public health, safety, and general welfare by providing for the grant of one or more Franchises for the construction and operation of a Cable System within the City; to provide for the regulation, to the extent provided for by law, of each Cable System within

the City in the public interest; to provide for the payment of fees and other valuable consideration by a Franchisee to the City for the use of Streets by its Cable System; to promote the widespread availability of quality Cable Service to City residents and businesses, the City, and other public institutions; to encourage the development of cable and other communications technology and Cable Systems as a means of communication between and among members of the public, City businesses, the City, and other public institutions; to promote competitive cable rates and Cable Services; to promote the safe and efficient use of City Streets; to enhance and maximize the communicative potential of Streets used by Cable Systems; and to encourage the provision of a diversity of information sources to City residents, businesses, the community, the City, and other public institutions by cable technology.

(b) Recognizing the continuing development of communications technology and uses, it is the policy of the City to encourage experimentation and innovation in the development of Cable System uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.

Section 78-284. Grant of Authority; Franchise Required.

(a) The City may grant one or more Franchises in accordance with this Ordinance.

(b) No Person may construct or operate a Cable System over, on, or under public Streets in the City without a Franchise granted by the City, and no Person may be granted a Cable Television Franchise without having entered into a Franchise Agreement with the City pursuant to this Ordinance.

(c) Unless otherwise authorized by applicable law, any Franchise granted pursuant to this Ordinance is solely for the provision of Cable Service. Nothing herein shall (i) have the effect of authorizing, prohibiting or conditioning a Franchisee's provision of other services as may be permitted by applicable federal or state law; or (ii) waive any right of the City, if any, to require a Franchisee to obtain other authorizations, licenses, permits or registrations as the City may require under applicable federal or state law.

Section 78-285. Franchise Characteristics.

(a) A Franchise authorizes use of City Streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a Cable Television System within a specified area of the City, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

(b) A Franchise is non-exclusive and will not expressly or implicitly preclude the issuance of other Franchises to operate Cable Systems within the City, or affect the City's right to authorize use of City Streets to other persons to operate Cable Systems or for other purposes as it determines appropriate.

(c) All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the Streets, and the City reserves the right to reasonably designate

where a Franchisee's facilities are to be placed within the Streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights of way.

(d) No transfer, whether by sale, assignment or change of control of a Franchise shall occur without the prior consent of the City and unless application is made by the Franchisee, and City approval obtained, pursuant to Section 78-304 hereof and the Franchise Agreement.

(e) A Franchise granted to an Applicant pursuant to this Ordinance to construct, operate and maintain a Cable System within the City, shall be deemed to constitute both a right and an obligation on the part of the Franchisee to provide the services and facilities of a Cable System as required by the provisions of this Ordinance and the Franchise Agreement. The Franchise Agreement shall constitute all of the terms and conditions of the Franchise that are finally negotiated and agreed upon by the City and Franchisee.

(f) Notwithstanding anything to the contrary, in the event that Franchisee, its parent, Affiliate or subsidiary elects to offer to Subscribers video programming services through any means or method not included within the definition of a Cable System, including, but not limited to, all "open video systems", Franchisee shall remain subject to all terms and conditions of the Cable Television Franchise granted pursuant to this Ordinance.

Section 78-286. Franchisee Subject to Other Laws; Police Power; No Waiver.

(a) A Franchisee shall at all times be subject to and shall comply with all applicable federal, state and City laws. A Franchisee shall at all times be subject to all

lawful exercise of the police power of the City, the eminent domain power of the City and any other powers granted the City by the Constitution of the State of Florida.

(b) Subject to applicable law, except as may be specifically provided in this Ordinance or under the terms of a Franchise Agreement, the failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Ordinance or a Franchise Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

Section 78-287. Interpretation of Franchise Terms.

(a) The provisions of this Ordinance shall apply to all cable Franchises.

(b) The provisions of this Ordinance shall, throughout the term of a Franchise, apply to a Franchise Agreement as if fully set forth in the Franchise Agreement, and the express terms of this article shall prevail over conflicting or inconsistent provisions in a Franchise Agreement unless such Franchise Agreement expressly provides otherwise.

(c) Except as to matters which are governed by federal law or regulation, a Franchise Agreement will be governed by and construed in accordance with the laws of the State of Florida.

Section 78-288. Applications for Grant, Renewal, Modification or Transfer of Franchises.

(a) A written Application shall be filed with the City for (i) grant of an initial Franchise; (ii) renewal of a Franchise in accordance with Section 626 (a-g) of the Communications Act, 47 U.S.C., § 546; (iii) modification of a Franchise Agreement; (iv) transfer of a Franchise; or (v) any other relief from the City pursuant to this Ordinance or a Franchise Agreement.

(b) Unless prohibited by applicable law, to be acceptable for filing, a signed original of the Application shall be submitted together with five (5) copies, and shall be accompanied by the required Application filing fee as set forth in Subsection 78-288(i) hereof, conform to any applicable request for proposals, and contain all reasonably required information. All Applications shall include the names and addresses of persons authorized to act on behalf of the Applicant with respect to the Application. The City Administrator may waive submission of certain information required herein upon request of the Applicant for good cause shown.

(c) All Applications accepted for filing shall be made available by the City for public inspection. Where said Application contains information designated in writing by the Applicant as proprietary, the City shall not make such information available to the public to the extent it is permitted to keep the information confidential pursuant to applicable law.

(d) An Application for the grant of a new Franchise may be filed pursuant to a request for proposals issued by the City on an unsolicited basis. The City, upon receipt of an unsolicited Application, may issue a request for proposals. If the City elects to issue a request for proposals upon receipt of an unsolicited Application, the Applicant may submit an amended Application in response to the request for proposals, or may inform the City that its unsolicited Application should be considered in response to the request for proposals, or may withdraw its unsolicited Application. An Application which does not conform to the requirements of a request for proposals may be considered non-responsive and denied on that basis.

(e) An Application for the grant of an initial Franchise, a transfer or change of control or a renewal shall contain, at minimum, the following information unless expressly waived in part by the City or as otherwise provided in a Franchise Agreement:

(1) Name and address of the Applicant and identification of the ownership and control of the Applicant, including: the names and addresses of all Persons with ten percent (10 %) or more ownership interest in the Applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the Applicant; the names and addresses of all officers and directors of the Applicant; and any other Cable System ownership interest in excess of ten percent (10%) of each named Person (other than the officers and directors of the Applicant); provided that for an Application for a renewal of a Franchise, the information regarding Cable System ownership shall be provided upon written request of the City.

(2) An indication of whether the Applicant, or any Person controlling the Applicant, or any officer, director or Person with five percent (5%) or more ownership interest in the Applicant, has been adjudged bankrupt, had a cable or telecommunications Franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such Person and a full explanation of the circumstances;

(3) A demonstration of the Applicant's technical, legal and financial ability to construct and/or operate the proposed Cable System, including identification of key personnel to the extent known;

(4) For an Application for an initial Franchise, or when requested in the case of a transfer or a renewal, a statement prepared by an independent certified public accountant regarding the Applicant's financial ability to complete the construction and operation of the Cable System proposed;

(5) A description of the Applicant's prior experience in Cable System ownership, construction and operation, and identification of communities in Florida (or if Applicant does not own any systems in Florida, identification of the twenty (20) largest franchise areas served by Applicant or its Affiliates) which the Applicant or any Person controlling the Applicant or having more than a five percent (5%) ownership interest in Applicant has, or has had, a cable Franchise or license or any interest therein;

(6) Identification of the area of the City to be served by the proposed Cable System, including a description of the service area's boundaries;

(7) A description of the services and physical facilities proposed, or in the case of a transfer or renewal, any changes to the current physical facilities, including channel capacity, performance characteristics, headend, and access facilities; upon request, the Applicant shall make information on technical design available for inspection;

(8) Where applicable, a description of the construction of the proposed Cable System, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

(9) If Applicant is currently operating a Cable System within the City, a description of the existing Cable System and capacity and the operator's plans to upgrade the Cable System, if any;

(10) If Applicant or Applicant's parent, or any subsidiary or Affiliate of Applicant is currently operating a SMATV System within the City, a list of all such locations;

(11) For an initial grant or in the case of a renewal or transfer and upon written request of the City for informational purposes, the proposed rate structure, including projected charges for each Service Tier, installation, converters, and other equipment or services, and the Applicant's ownership interest in any proposed Cable Services to be delivered over the Cable System;

(12) An Application for a renewal shall also include a demonstration of how the Applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the City;

(13) Upon written request of the City and for information purposes only, a description of any non-cable telecommunications services offered or proposed to be offered by the Applicant or its parent, Affiliate or subsidiary in Palm Beach County.

(14) Pro forma financial projections for the first five (5) years of the Franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules. In the case of a transfer, such pro forma financial plan shall be provided if the transferee or its parent is not a publicly traded company.

(15) If an Applicant for an initial Franchise proposes to provide Cable Service to an area already served by an existing cable Franchisee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area which would encompass the overbuild, and the ability of the Streets to accommodate an additional System;

(16) Upon written request of the City, any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance and information that the City may reasonably request of the Applicant in a timely manner that is relevant to the City's consideration of the Application; and

(17) An Affidavit or declaration of the Applicant or authorized officer certifying the truth and accuracy of the information in the Application, acknowledging the enforceability of Application commitments, and certifying that the proposal meets all federal and state law requirements.

(f) An Application for modification of a Franchise Agreement shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the financial impact of the requested modification on Subscribers and others, and the financial impact on the Applicant if the modification is approved or disapproved;

(3) A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C., § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

(4) Any other information necessary for the City to make an informed determination on the Application for modification; and

(5) An Affidavit or declaration of the Applicant or authorized officer certifying the truth and accuracy of the information in the Application, and certifying that the Application is consistent with all federal and state law requirements.

(g) An Application for renewal of a Franchise shall comply with the requirements of Section 78-303 hereof.

(h) An Application for approval of a transfer of a Franchise shall comply with the requirements of Section 78-304 hereof.

(i) Unless prohibited by applicable law, to be acceptable for filing, an Application shall be accompanied by a filing fee in the following amount, as appropriate:

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| 1) | For a new or initial Franchise: | \$25,000 |
| 2) | For renewal of a Franchise: | \$20,000 |
| 3) | For a transfer of a Franchise
(other than a pro forma transfer): | \$ 5,000 |
| 4) | For a pro forma transfer of a Franchise | \$ 1,000 |

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| 5) | For modification of a Franchise Agreement pursuant to 47 U.S.C. § 545: | \$ 1,000 |
| 6) | For any other relief: | \$ 500 |

The purpose of the filing fee is to defray a portion of the City's cost in processing an Application. The filing fee is therefore intended to be a charge incidental to the awarding or enforcing of a Franchise within the meaning of Section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the Franchise fee imposed in a Franchise Agreement or credited against any tax, including, but not limited to, the Florida Communications Service Tax (Ch. 202.FLStat) or any substitute tax or fee, unless required by applicable law.

Section 78-289. Grant of Franchises.

(a) The City may grant a cable Franchise for a period not to exceed fifteen (15) years plus such extensions as may be approved by the City to serve the City.

(b) In evaluating an application for a Franchise, the City may, if applicable, and if required by applicable federal or state law, shall consider, among other things, the following factors: the Applicant's technical, financial, and legal qualifications to construct and operate the proposed System; the adequacy of the proposed construction arrangements, facilities, equipment, and services based on the public convenience, safety and welfare; the Applicant's experience in constructing and operating cable systems and providing Cable Service in other communities. In the case of an initial grant, the City shall also consider the economic impact upon private property within the Franchise Area; the public need for such Franchise, if any; the capacity of public rights-of-way to accommodate the Cable System; the present and future use of the public rights-of-way to be used by the Cable System; the potential disruption to existing users of the public

rights-of-way to be used by the Cable System and the resultant inconvenience which may occur to the public; the financial ability of the Franchise Applicant to perform; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Evaluation by the City shall not be based on the content of the programming the Applicant proposes to provide.

(c) The City shall hold a public hearing to consider an Application or Applications, the Applicant(s) shall be given at least ten (10) days prior notice of the hearing and shall be given an opportunity to be heard. Based upon the Application(s), the testimony presented at the public hearing, any recommendations of the City Administrator or staff, and any other information relevant to the Application(s), the City shall decide by resolution whether to grant or deny a Franchise Application.

(d) As a condition precedent to the grant of a Franchise, the Applicant shall file an acceptance of the Franchise accompanied by any and all bonds, certificates of insurance or other obligations as required in a Franchise Agreement no later than the date of the City Commission's consideration of the grant or denial of the application. This period may be extended for good cause by the City. If the acceptance is not filed with the City by the above-referenced date, or if the period is not extended by the City, the Commission may delay consideration of the Application or deny the Application. The City may, at its option, grant the Applicant a short-term extension(s). The grant of such a short term extension(s) will not confer on the Applicant the right to an automatic acceptance, transfer, modification or renewal. In the case of a transfer, the City shall grant an extension to this requirement as long as the Franchisee keeps such insurance, bonds or other surety in place until thirty (30) days after the transaction related to the

transfer closes and the transferee has provided its insurance, bonds or other surety in place within thirty (30) days following such closing.

(e) Unless prohibited by applicable law, Applications for the grant of an initial Franchise, a Franchise renewal, a Franchise Agreement modification, or a Franchise transfer may be subject to a processing fee in addition to the filing fee in an amount not to exceed the reasonable and justifiable out-of-pocket costs to the extent that the filing fee does not cover the costs incurred by the City in considering the Application, including consulting and legal costs. Prior to the date of the resolution approving or denying the Franchise Agreement or modification or transfer thereof by the City Commission, the City shall notify the Franchisee of the estimated amount of any processing fee and its method of calculation.

This processing fee is therefore intended to be a charge incidental to the awarding or enforcing of a Franchise within the meaning of Section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the Franchise fee imposed in a Franchise Agreement or any federal or state tax and shall not be passed through to Subscribers as a separate line item unless required by applicable law.

Section 78-290. Commencement of Service.

Any Franchisee commencing initial construction of a Cable Television System after the effective date of this Ordinance shall commence construction within one year of the effective date of the Franchise Agreement and shall complete construction so as to offer service to all dwellings within the Franchise Area in compliance with the requirements of a Franchise Agreement, but in no event later than two (2) years from the

effective date of the Franchise Agreement unless an extension is granted by the City for good cause shown.

Section 78-291. Insurance; Surety; Indemnification.

(a) A Franchisee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire term of the Franchise including any renewals thereof, the following liability insurance coverage insuring the City to the extent applicable and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Florida law and commercial general liability insurance with contractual coverage with respect to the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's business in the City, in the minimum amounts of \$1,000,000 per occurrence, for bodily injury or death, broad form property damage liability, and insurance to cover infringement of copyrights.

(b) All insurance policies shall be with insurance companies authorized to do business in the State of Florida and such companies shall have a minimum Best's rating of A-1, or an equivalent rating. The City may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by law.

(c) A Franchisee shall keep on file with the City certificates of insurance evidencing the above insurance coverage and evidencing that the City, its officers, boards, commission, commissioners, agents and employees are listed as additional insureds on the general liability policy. If a (potential) claim is filed such that the City claims insurance coverage, Franchisee shall immediately respond to all reasonable requests by the City for information with respect to the scope of the insurance coverage.

(d) All general liability insurance policies shall provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City. A Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance satisfactory to the City which complies with this Ordinance.

(e) A Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses arising out of the willful or negligent acts or omissions of the Franchisee or its officers, agents, employees or contractors relating to construction, maintenance or operation of its Cable System, and the conduct of Franchisee's business in the City; provided, however, that Franchisee's obligation hereunder shall not extend to any claims caused by the willful misconduct or negligence of the City, its officials, boards, commissioners, agents or employees, or to claims arising from Franchisee's provision of Access Channels for public, educational and/or governmental use pursuant to a Franchise granted hereunder, to the extent such claims relate to programming and content on such channels, over which Franchisee has no editorial control nor exercises administrative control. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings, and claims arising out of copyright infringement or a failure by the Franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the Cable System, claims arising out of Section 638 of the Communications Act, 47 U.S.C. 558, and claims against the

Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any Person, firm or corporation. If any such claim arises, the Franchisee shall have the obligation and duty to defend the City and any other indemnified party hereunder; provided, however, Franchisee may not agree to any settlement of claims affecting the City without the City Attorney's approval. If the City Attorney finds that separate representation to fully protect the interests of the City is necessary, Franchisee shall consult with the City Attorney on counsel that is acceptable to the City Attorney. If Franchisee is unwilling or unable to select counsel acceptable to the City Attorney, whose acceptance shall only be withheld for good cause shown, Franchisee shall pay all actual and reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding subject to this indemnification. The City's expenses shall include all out of pocket expenses, attorney's fees and costs of the City attorney or assistants, or any City employees, outside attorneys or other agents. Notwithstanding the foregoing, Franchisee shall not be required to indemnify the City pursuant to this Ordinance or a Franchise Agreement for actions relating to public, government and education access programming decisions outside of Franchisee's control or for the City's use of the Cable System or the use of public, government and education Access Channels, facilities or funding.

Section 78-292. Security Fund.

(a) Prior to a Franchise becoming effective, the City shall require a Franchisee to post with the City a cash security deposit to be used as a security fund to ensure the Franchisee's faithful performance of and compliance with all provisions of this

Ordinance, the Franchise Agreement, and other applicable law, and compliance with all orders, permits and directions of the City, and the payment by the Franchisee of any claims, liens, fees, or taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. The amount of the security fund shall be the amount that the City determines, under circumstances existing at the time, that is necessary to protect the public, to provide adequate incentive to the Franchisee to comply with this Ordinance and the Franchise Agreement, and to enable the City to effectively enforce compliance therewith. The Franchise Agreement shall provide for the amount and the procedures to be followed with respect to the security fund.

(b) In any Franchise Agreement entered into pursuant to this Ordinance, the City may agree in a Franchise Agreement that a Franchisee may, in lieu of the security fund, file and maintain with the City a bond with an acceptable surety or an irrevocable letter of credit in the amount of no less than Two Hundred Thousand Dollars (\$200,000) to indemnify the City against any losses it may suffer in the event the Franchisee fails to comply with one or more of the provisions of its Franchise. Said bond shall be obtained at the sole expense of the Franchisee and remain in effect for the full term of the Franchise plus, at minimum, an additional six (6) months thereafter. The Franchisee and its surety shall be jointly and severally liable under the terms of the bond for any damages or loss suffered by the City as a result of the Franchisee's nonperformance, including the full amount of any compensation, indemnification or cost of removal of any property of the Franchisee in the event of default, a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond. Any bond shall provide for thirty (30) days' prior written notice to the City of any intention on the part of the Franchisee to cancel,

fail to renew, or otherwise materially alter its terms. Neither the filing of an indemnity bond with City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the bond or otherwise.

(c) The rights reserved to the City with respect to the security fund, indemnity bond or letter of credit are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by other law or the Franchise Agreement, and no action, proceeding or exercise of a right with respect to such security fund or indemnity bond will affect any other right the City may have.

Section 78-293. Construction Bond.

(a) Prior to any Cable System construction, upgrade, or other work in the Street, a Franchisee shall establish in the City's favor a construction bond in an amount specified in the Franchise Agreement or other authorization as necessary to ensure the Franchisee's faithful performance of the construction, upgrade, or other work, but the amount of such construction bond shall not be less than Fifty Thousand Dollars (\$50,000) and shall not exceed Five Hundred Thousand Dollars (\$500,000).

(b) In the event a Franchisee subject to such a construction bond fails to complete the Cable System construction, upgrade or other work in the Streets in a safe, timely and competent manner in accordance with the provisions of the Franchise Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or losses suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any

property of the Franchisee, or the cost of completing or repairing the Cable System construction, upgrade or other work in the Streets, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund pursuant to Section 78-292 hereof where such amount exceeds that available under the security fund.

(c) Upon completion of the Cable System construction, upgrade or other work in the Streets and payment of all construction obligations of the Cable System to the satisfaction of the City, the City may eliminate the bond or reduce its amount by returning the bond or executing a release as required. However, the City may subsequently require an increase in the bond amount for any subsequent construction. In any event, the total amount of the bond shall not exceed the amount specified in Subsection (a) of this Section.

(d) The construction bond shall be issued by a surety having a minimum rating that is subject to the reasonable satisfaction of the City, and shall contain a provision that the bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.

(e) The rights reserved by the City with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the City may have under this Ordinance, the Franchise Agreement, or at law or equity.

Section 78-294. Minimum Facilities and Services.

(a) The following minimum requirements for facilities and services apply to all Franchises granted by the City. The City may require in a Franchise Agreement that a

Franchisee exceed these minimum requirements where it determines, under circumstances existing at the time of the application, that the additional requirements are necessary to meet the City's future cable-related needs and interests or to serve the public interest.

(1) Any Cable System constructed, upgraded, reconstructed, or rebuilt after the effective date of this Ordinance shall have a minimum capacity of 860 MHz or the equivalent thereof available for immediate or potential use. A Franchise Agreement may provide for a larger minimum capacity requirement.

(2) The City shall require in a Franchise Agreement that a Franchisee provide Access Channels, facilities and other support for public, educational and/or governmental use, which may include, but not be limited to, provision of an Institutional Network.

(3) The City may require any Cable System operating pursuant to a Franchise to cablecast City Commission meetings live to all Subscribers.

(4) A Cable System shall provide leased access channels as required by federal law.

(5) Unless otherwise provided in a Franchise Agreement, a Franchisee shall provide no less than one service outlet and one on-line access connection to all City buildings and all public and private schools within its Franchise Area not already served by another franchised cable operator at no cost to the City or school involved, and shall charge not more than its time and material costs for any additional service outlets or equipment provided to such facilities.

(6) A Franchisee shall design its Cable System to allow the City to interrupt Cable Service in an emergency to deliver necessary information to Subscribers subject to federal, state and County priority. Franchisee shall, at minimum, meet all FCC requirements for emergency alert systems.

(7) A Franchisee shall transmit all imbedded signals, including closed circuit captioning information for the hearing impaired and audio signals for the visually impaired.

(8) Standard installation shall consist of a drop, not exceeding one hundred twenty-five (125) feet from the cable plant to the nearest entry point of a Subscriber's residence. Residential drops in excess of one hundred twenty-five (125) feet may be charged according to the Franchisee's rate schedule.

(b) Except for Cable Systems in operation on the effective date hereof pursuant to Franchises initially granted or renewed in areas annexed by the City subsequent to said initial grant or renewal, a Franchise Agreement shall require that a Franchisee make Cable Service available to every dwelling within the City of West Palm Beach or as otherwise provided in a Franchise Agreement. If the City annexes any new areas after the date of this Ordinance, Franchisee shall be required to provide Cable Service at standard installation rates to such areas subject to this Ordinance and any Franchise granted hereto. Notwithstanding anything to the contrary, a Franchisee shall not be required to provide Cable Service to any area already served by a franchised cable operator.

(c) In the event a Franchisee lawfully operating in a Franchise Area that is less than the entire City desires to provide service to an area of the City already being

served by a franchised cable operator, then the Franchisee wishing to expand service shall agree to construct and operate its Cable System on terms no more favorable and no less burdensome than those pursuant to which the existing operator is subject.

(d) A Franchisee shall interconnect its PEG Access Channels with the PEG Access Channels of any adjacent cable systems owned by or affiliated with Franchisee if such interconnection is technically and economically feasible. Upon the written request of the City and as required in a Franchise Agreement, Franchisee shall interconnect its PEG Access Channels to any or all other Cable Systems operating within the City for the purpose of transmitting PEG programming if (i) such interconnection is technically feasible, (ii) the other operator(s) of such Cable Systems operating within the City pays for the cost of the interconnection and (iii) such other operator(s) provide funding for PEG access equivalent to the amount provided by Franchisee.

(e) A Franchisee shall locate each government Access Channel on the same channel number throughout the City.

(f) In an initial or renewal franchise granted pursuant to this Ordinance, , a Franchisee shall agree to maintain that level of technology to its Cable System to satisfy the State-of-the-Art requirement, as defined in Section 78-282(y) herein (subject to qualifications, conditions, and terms that may be expressly identified in a Franchise Agreement).

(g) Pursuant to the procedures set forth in Section 78-305, failure to comply with any part of this Section 78-294 may result in the imposition of liquidated damages in the amount of Two Hundred Fifty Dollars (\$250) per day per violation or as otherwise provided in a Franchise Agreement.

Section 78-295. Technical Standards.

(a) Any Cable System within the City shall meet or exceed the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted. Antennas, supporting structures, and outside plant used in the Cable System shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, County, City and/or utility laws, ordinances, rules and regulations.

(b) All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, and all local codes, laws and accepted industry practices, and as hereinafter may be amended or changed.

(c) At the times required by FCC rules, the Franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this Ordinance, the Franchise Agreement, and FCC requirements. Upon request, the Franchisee shall provide the proof of performance test results promptly to the City. The City shall have the right to inspect the Cable System facilities during and after their construction to ensure compliance with the requirements of the Franchise Agreement, this Ordinance, and FCC standards. A Franchisee has the right to be present at all such inspections.

(d) The City may require an annual proof of performance test, or other tests as specified in a Franchise Agreement or applicable law or regulation, to be performed promptly upon request and at the expense of the Franchisee. The Franchisee shall provide the test results to the City within thirty (30) days of completion.

(e) A Franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the Cable System of another Franchisee, or individual or master antennas used for receiving television or other broadcast signals.

Section 78-296. Access Channels and Facilities.

(a) It is the purpose and intent of the City to require that all Franchisees provide Access Channels, facilities, equipment and support sufficient to meet the needs and interests of the community in light of the costs thereof with respect to public, education and government activities as set forth in this Section 78-296.

(b) A Franchisee granted a Franchise pursuant to this Ordinance shall provide to the City, a grant for PEG capital support, as set forth in a Franchise Agreement.

(c) A Franchisee shall provide a minimum of one Access Channel and facilities dedicated to the exclusive use of the City and such other capital support for public, educational and/or governmental use as required in a Franchise Agreement. A Franchisee shall provide at minimum one return line for each Access Channel then used by the City to the headend, as technically necessary for the operation of Access Channels referred to herein or as otherwise required by a Franchise Agreement. The City may increase the number of PEG Access Channels to a number not to exceed three, so long as a threshold use requirement is met for each Channel beyond the first the City then utilizes. In order to request an additional PEG Access Channel, the existing PEG Access Channel must be programmed at least six hours a day with non-repetitive, locally produced programming, Monday through Friday, for a minimum of six consecutive weeks. Character-generated programming shall not be included for purposes of

calculating the programming requirement. Once the threshold is met and an additional Access Channel given any subsequent Access Channels must maintain the threshold requirement. After attaining the threshold requirement, if the subsequent Access Channels fails to meet the threshold for four consecutive months, the additional Access Channels may be reclaimed by Franchisee upon sixty (60) days written notice. Under no circumstances shall the City lose the right to its first Access Channel. Upon request of the City, a Franchisee shall cablecast to all City Subscribers all Palm Beach County public, educational and/or government programming provided such request shall not increase the number of PEG Access Channels provided to the City above three.

(d) During the Franchise term, the Franchisee shall provide, as specified in a Franchise Agreement or otherwise agreed to, such equipment, facilities, technical and capital support as the City Commission may determine is useful for the production and cable casting of programming on the public, education and government channels.

(e) As may be required in a Franchise Agreement or otherwise agreed to, a Franchisee shall tape or cablecast live events held in the City as may be designated by the City.

(f) An Application for an initial grant, renewal or transfer of a Franchise may, or at the City's request shall, include proposals for the provision of an institutional network interconnecting City, educational institutions and/or other public facilities as designated by the City.

(g) An Application for an initial grant, renewal or transfer of a Franchise may, or at the City's request shall, subject to Section 78-294(d), include a proposal for the interconnection of Franchisee to any or all other Cable Systems operating within Palm

Beach County for purposes of providing or sharing PEG Access Channels. Where applicable, an Applicant shall include in the Application a statement outlining the status of the interconnection of its Cable System to any and all Cable Systems operating within Palm Beach County.

(h) A Franchise Agreement may provide for additional capital grants in lieu of or in addition to some or all of the facilities, equipment, and services referenced in this Section.

(i) The facilities, equipment, monetary grant and all other support to be provided by a Franchisee and as set forth in a Franchise Agreement constitute capital costs that are required by the Franchise to be incurred by Franchisee for public, educational or government access facilities within the meaning of Section 622(g)(2)(C) of the Communications Act, 47 U.S.C. § 542(g)(2)(C), and such grant does not constitute a Franchise fee or tax within the meaning of the Communications Act, state law, City code or a Franchise Agreement. The City shall use the facilities, equipment, monetary grant and all other support to be provided by Franchisee hereunder in a manner consistent with Section 622(g)(2)(C) of the Communications Act.

Section 78-297. Franchise Fee.

(a) As of the effective date hereof, the State of Florida Communications Service Tax, (F.S., Ch. 202), prohibits the obligations imposed on a Franchisee in this section and this Section 78-297 is severable from this Ordinance and has no effect on the remaining valid portions of this Ordinance. However, if state or federal law allows the City to impose the requirements of this section, the City expressly reserves the right to do so.

(b) If permitted by applicable law, a Franchisee, as compensation for the privilege granted under a Franchise pursuant to this Ordinance for the use of the City's Streets to construct and operate a Cable System, shall pay to the City a Franchise fee in an amount up to a maximum of either (i) five percent (5%) of the Franchisee's Gross Revenues derived from the operation of its Cable System within the City during the term of its Franchise; or (ii) in the event the Communications Act or other applicable law is amended to permit the City to assess a Franchise fee of a greater amount than that specified in (i) above, the Franchisee agrees to pay to the City the new amount after a public hearing in which the public and Franchisee are given an opportunity to comment on the impact of the higher fee. In no event shall a Franchisee pay a Franchise fee greater than the maximum permitted by applicable law.

(c) A Franchisee shall pay the Franchise fee due to the City on a quarterly basis. Payment for each month shall be made to the City not later than forty five (45) calendar days after the end of each calendar month.

(d) A Franchisee shall file with the City within sixty (60) days after the expiration of each calendar year or portion thereof during which its Franchise is in force, a financial statement setting forth the computation of Gross Revenues used to calculate the Franchise fee for the preceding year or portion thereof and a detailed explanation of the method of computation. The statement shall be certified by a duly authorized corporate officer. The Franchisee will bear the cost of the preparation of such financial statements.

(e) Subject to applicable law, any acceptance by the City of any Franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct

amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable.

(f) The Franchise fee payment is not a payment in lieu of any other tax, fee or assessment, subject to applicable law.

(g) If permitted by applicable law, the City, or its representative, may from time to time but not more than once in any twelve (12) month period, and upon reasonable notice, inspect, audit any and all books and records of the Franchisee relevant to the determination of Gross Revenues and the computation of Franchise fees due, and may re-compute any amounts determined to be payable under the Franchise. In the case of any Franchise granted, renewed, modified or transferred on or after the effective date hereof the cost of the audit will be borne by the Franchisee if, as a result of the audit, the City determines that the Franchisee has underpaid the Franchise fees owed in an amount equal to or exceeding two percent (2%) of the Franchise fees actually paid. A Franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors in Palm Beach County for inspection and copying.

(h) In the event that a Franchise fee payment is not received by the City on or before the due date set forth in Subsection (c) above, or is underpaid, any Franchisee granted an initial Franchise, renewal, modification or transfer on or after the date hereof shall pay a late charge of eighteen percent (18%) per annum of the amount of the unpaid or underpaid Franchise fee payment; provided, however, that such rate does not exceed the maximum amount allowed under Florida law. Any interest and/or late charges paid by Franchisee is intended to be a charge incidental to the enforcing of a Franchise within the meaning of Section 622 (g)(2)(D) of the Communications Act, 47 U.S.C.

§ 542(g)(2)(D), and may not be deducted from the Franchise fee imposed by this Ordinance or any Franchise Agreement.

(i) Unless prohibited by law, when a Franchise terminates for whatever reason, the Franchisee shall file with the City within ninety (90) calendar days of the date it ceases operations in the City, a financial statement, audited by an independent certified public accountant and certified by the Franchisee's chief or other duly authorized financial officer, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Adjustments will be made at that time for Franchise fees due to the date that the Franchisee's operations ceased.

Section 78-298. Reports and Records.

(a) The Franchisee shall submit reports to the City quarterly according to the following schedule: January through March are due on or before April 25, April through June are due on or before July 25, July through September are due on or before October 25 and October through December are due on or before January 25 of each year or as otherwise provided in a Franchise Agreement.

The quarterly report shall include, but not be limited to:

(1) Number of homes passed, number of cable plant miles, number of new installs, number of disconnects and net result of new installs and disconnects.

(2) Telephone reports, broken down by quarter, indicating the number of calls received, number of calls abandoned, number of calls receiving a busy signal and percentage of total calls for which a busy signal was received.

(3) A summary by quarter for the number of standard installations performed within seven days, number of unplanned service interruptions, the hours in

which planned service interruptions have occurred, number of unplanned service interruptions by duration, number of service interruptions responded to within 24 hours, number of other service problems responded to within 36 hours, preventative measures to reduce or eliminate service interruptions and any other information that may be reasonably required to monitor the Franchisee's compliance with this Ordinance. A Franchisee may comply with the requirements of this subsection by providing to the City a copy of the actual written complaint and/or service interruption logs maintained by Franchisee.

(4) Unless prohibited by applicable law, revenue information, including, but not limited to number of Subscribers for each type of Cable Service offered, and the Gross Revenue from all sources attributable to the operations of the Cable System by the Franchisee in the City, stating separately by category each source and the amount of revenue attributable thereto. As of the date of this Ordinance, the obligations imposed on Franchisee in this section to provide an annual financial statement are prohibited by the State of Florida Simplified Communications Service Tax, F.S., Ch. 202, and this obligation is severable from this Ordinance and has no effect on the remaining valid provisions hereof. However, if state or federal law allows the City to impose the requirements of this section, the City expressly reserves the right to do so.

(b) Within six (6) months of the close of its fiscal year, the Franchisee shall provide an annual report to the City that includes the following information:

(1) A summary of the activities of the previous year in development of the Cable System, including as pertains to Cable Services, initiated or discontinued policy changes enacted during the previous year, number of cable Subscribers for each tier or

type of Cable Service or Cable product (including gains and losses), homes passed and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including Cable System upgrades, during the year with any projections previously provided to the City, as well as rate and charge increases and/or decreases for the previous fiscal year.

(2) The web-site addresses to the Franchisee's ultimate parent annual report and 10-K as filed with the SEC, and all filings made with the State of Florida under the Communications Services Tax Simplification Law. Unless prohibited by applicable law, to verify Franchise fee payments, Franchisee shall provide, upon written request, an annual financial report to include a statement of sources of revenues for the Franchise Area. The statement shall be audited if Franchisee has audited statements prepared in its normal course of business. If not, the statements shall be certified by the chief financial officer of the Franchisee. The financial report shall include notes to the financial statements that specify all significant accounting policies and practices upon which it is based. As of the date of this Ordinance, the obligations imposed on Franchisee in this section to provide an annual financial statement are prohibited by the State of Florida Simplified Communications Service Tax, F.S., Ch. 202, and this obligation is severable from this Ordinance and has no effect on the remaining valid provisions hereof. However, if state or federal law allows the City to impose the requirements of this section, the City expressly reserves the right to do so.

(3) Where applicable, a copy of updated maps depicting the location of all trunk lines and feeder lines and associated devices in the City to the extent such locations

have changed. Upon request of the City, such maps shall be provided in digitized form at the expense of the Franchisee.

(4) A summary of written subscriber or resident complaints, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent Cable System problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the City, subject to Franchisee's obligation to maintain Subscriber privacy in accordance with federal law.

(5) Upon written request, and if not otherwise provided, a summary of the number of unplanned service interruptions, the hours in which planned service interruptions have occurred and the number of unplanned service interruptions by duration, including preventative measures to eliminate reoccurrence.

(6) Upon written request, if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the Franchisee or parent corporation stock or ownership interests are publicly traded, a copy of its most recent annual report.

(7) Upon written request, if the Franchisee is a partnership, a list of the partners, including any limited partners, and addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner and the officers and directors of any parent corporation; and where the general partner or parent corporation ownership interests are publicly traded, a copy of its most recent annual report.

(8) Upon written request, a list of all people holding five percent (5%) or more ownership or otherwise cognizable interest in the Franchisee pursuant to the Communications Act and 47 C.F.R. 76.501.

(9) A copy of the rules and regulations of the Franchisee applicable to Subscribers of the Cable System.

(10) A report on the number of senior citizens, economically disadvantaged or disabled Subscribers receiving any rate discounts and the amount of any such discounts for specific Cable Services if Franchisee offers separate rates or discounts for those categories of Subscribers.

(11) A report on the number of multiple dwelling buildings and units therein receiving Cable Service under bulk agreements.

(12) A full schedule and description of services, service hours and location of the customer service office of the Franchisee or offices available to Subscribers, and a schedule of all rates, fees and charges for all Cable Services provided over the Cable System.

(13) Upon written request, a report on the number of total Subscribers served by the Franchisee in the Cable System, with a breakdown by the types of Cable Services received by Subscribers.

(14) Upon written request, a copy of any filing made to the FCC pursuant to Equal Employment Opportunity Council requirements.

(c) Upon each written request by the City made not more than once annually, a Franchisee shall within 45 days of receipt of the request, provide the following

documents to the City, without regard to whether the documents are filed by the Franchisee or an Affiliate:

(1) If not otherwise available, annual financial report of the Franchisee or its parent or any Affiliate of Franchisee that controls Franchisee and issues an annual financial report.

(2) Copyright filings reflecting the operation of the Cable System.

(3) Any pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted within the previous twelve (12) months by or on behalf of the Franchisee to the FCC, SEC or any state or federal agency, court or regulatory council that may directly and adversely impact the operation of the Franchisee's Cable System in the City or that may adversely impact the rights or obligations of the City under this Ordinance or the Franchise Agreement and any and all responses, if any, to such filings.

(4) Any and all notices of deficiency, forfeiture or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the Cable System, Franchisee or any Affiliate of Franchisee, provided, however, that any such notice or documents relating to an Affiliate of the Franchisee need be provided only to the extent the same may directly and adversely affect or bear on operations of the Franchisee in the City. For example, a notice that an Affiliate that has a management contract for the Cable System located in the City was not in compliance with the FCC's EEO requirements would be deemed to affect or bear on operations in the City.

(e) The Franchisee shall, upon written request, furnish to the City such additional reports as a Franchisee may prepare as a customary business practice with respect to its operations of the Cable System, which in the City's discretion are reasonable and necessary for the administration and/or enforcement of this Ordinance.

(f) A Franchisee shall provide the City, within thirty (30) days of filing or receipt of any petition or filings with any federal, state, or local agencies or courts, which may, in the reasonable judgment of the Franchisee, adversely impact the construction, operation or maintenance of Franchisee's Cable System, affect City and/or Subscribers regarding this Ordinance or a Franchise Agreement, including, but not limited to, any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy. In any administrative or legal proceeding in which Franchisee is a party, which in the reasonable judgment of Franchisee adversely impacts the construction or operation of its Cable System in the City, Franchisee shall provide a copy of any filed document that is available for public dissemination, upon written request of the City, within five (5) days. To the extent the City desires and may properly participate in the proceeding, Franchisee agrees that it will not oppose any necessary extension or tolling of time that may allow the City's participation in such matter. However, the Franchisee may oppose or object to any extension of time that exceeds the period of time used by Franchisee to provide a copy of the requested filing to the City.

(g) A Franchisee shall make a complete set of books and records available for inspection and audit by the City in Palm Beach County, for purposes of ascertaining compliance with this Ordinance and the Franchise Agreement, subject to Subsection (h)

below. Such inspection and audit shall be upon reasonable notice and during normal business hours.

(h) Any materials requested by the City which are deemed proprietary and confidential by Franchisee shall be made available for review and inspection by the City at a location in Palm Beach County (but not copying or removal, unless otherwise required by federal or state law, including but not limited to the public records law of the State of Florida). The City shall accord all books and records that it inspects under this Section the degree of confidentiality such books and records are entitled to under federal and state law. A Franchisee's books and records shall not constitute public records, except to the extent required by federal and state law. To the extent a Franchisee considers any books or records that it is required to produce to be confidential or otherwise protected from public disclosure, Franchisee shall designate which documents it views as protected and provide a written explanation to the City of the legal basis for Franchisee's claim of protection.

Section 78-299. Customer Service Requirements.

(a) A Franchisee shall maintain all parts of its Cable System in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate, and prompt service for all of its Subscribers and facilities.

(b) Cable System Office. Unless this requirement is expressly waived or modified by a Franchise Agreement, a Franchisee shall maintain a Subscriber service center located within the City, which shall include a place where Subscribers may pay their bills, pick up and return converters or other equipment and initiate installations or

other action with respect to Cable Service. This service office shall be open during Normal Business Hours, as defined below, which as of the effective date of this Ordinance, are from 8:00 a.m. to 5:30 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday.

(c) Telephone Availability. Franchisee shall maintain a publicly-listed local, toll-free telephone number and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by Subscribers and members of the public to contact the Franchisee on a full-time basis, twenty-four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified Franchisee representatives will be available to respond to Subscriber telephone inquiries, Monday through Friday from 8:30 a.m. to 8:00 p.m.; and on Saturday from 8:30 a.m. until 5:00 p.m. With respect to those calls received during the hours which Franchisee is not required to provide qualified Franchisee representatives under this subsection, an answering machine or service capable of receiving and recording service complaints shall be employed. Franchisee shall comply with the telephone answer time standards set forth in Subsection (d) below.

(d) Franchisee shall answer all Subscriber service and repair telephone calls made under Normal Operating Conditions, as defined below, within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Under Normal Operating Conditions, Subscribers shall receive a busy signal less than three (3) percent of the time. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis.

(e) Franchisee must meet each of the following standards no less than ninety-five (95) percent of the time under Normal Operating Conditions as measured on a quarterly basis:

(1) Standard installation work shall be performed within seven (7) business days after an order has been placed except in those instances where a Subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to one hundred and twenty-five (125) feet from the existing distribution System. If scheduled installation is neither started nor completed as scheduled, the Subscriber will be telephoned by an employee of the Franchise the same day. If the call to the Subscriber is not answered, an employee of the Franchisee shall telephone the Subscriber the next day;

(2) Excluding conditions beyond the control of the Franchisee, the Franchisee will respond to service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Other service problems will be responded to promptly and in no event later than forty-eight (48) hours after the problem becomes known. All service interruptions and service problems within the control of Franchisee will be corrected within seventy-two (72) hours after receipt of a complaint;

(3) The appointment window alternatives made available for installations, service calls, repairs, and other installation activities will be either a specific time, a four-hour time block during Normal Business Hours, or at the election and discretion of the Subscriber, "all day;"

(4) Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment; and

(5) If, at any time, an installer or technician is running more than 30 minutes late for a scheduled appointment, an attempt to contact the Subscriber will be made and the appointment rescheduled as necessary at a time which is convenient for the Subscriber.

(f) For purposes of this Section 78-299, the term "Normal Business Hours" shall mean those hours during which most similar businesses in the community are open to serve Subscribers, which as of the effective date of this Ordinance, are from 8:00 a.m. to 5:30 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday, or as otherwise defined by the FCC. In all cases, Normal Business Hours shall include either some evening hours at least one night per week or some weekend hours. The term "Normal Operating Conditions" means those service conditions which are within the control of the Franchisee, or as otherwise defined by the FCC. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee shall include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonal demand periods, and routine maintenance or upgrade of the Cable System.

(g) Disconnection.

(1) Voluntary Disconnection.

a. A Subscriber may terminate service at any time.

b. A Franchisee shall promptly disconnect any Subscriber who so requests from the Franchisee's Cable System. No period of notice prior to voluntary termination of service may be required of Subscribers by any Franchisee. So long as the Subscriber returns equipment to Franchisee's service center located in the City or makes available to Franchisee to pick up within three (3) business days of the disconnection, no charge may be imposed by any Franchisee for such voluntary disconnection or for any Cable Services delivered after the date of disconnection request.

c. A Subscriber may be asked, but not required, to disconnect the Franchisee's equipment.

d. Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after the converter has been recovered by the Franchisee. The refund process shall take a maximum of forty-five (45) days from the date disconnection was requested to the date the Subscriber receives the refund.

(2) Involuntary Disconnection. If a Subscriber fails to pay a monthly Subscriber or other fee or charge, the Franchisee may disconnect the Subscriber's service outlet; however, such disconnection shall not be effected until forty-five (45) days after the date on which the applicable monthly bill was sent to the Subscriber and advance written notice of intent to disconnect to the Subscriber in question. The notice of delinquency and impending termination may be part of a billing statement provided that the message is in bold or large type or other similar manner designed to bring the information to the Subscriber's attention. If the Subscriber pays within forty-five (45) days after the date on which the applicable monthly bill was sent and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection,

upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate Cable Service. Franchisee reserves the right to deny Cable Service to any Subscriber who has been repeatedly disconnected for nonpayment of such services to the extent such rights are consistent with applicable state and federal law.

(3) With respect to any disconnection, whether requested or involuntary, a Franchisee shall comply with the rules and regulations of the FCC and applicable law regarding ownership, sale, removal and abandonment of home wiring.

(h) Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible. Franchisee shall use its best efforts to insure that such interruptions shall occur only during the hours of 1:00 a.m. to 6:00 a.m. Franchisee shall maintain a written log for all intentional service interruptions.

(i) Franchisee shall notify the City Administrator or designee immediately if a service interruption affects two hundred (200) or more Subscribers for a time period greater than four (4) hours.

(j) Franchisee shall cause all its field employees to wear a picture identification badge indicating their employment by Franchisee. This badge shall be clearly visible to the public.

(k) A Franchisee shall develop written procedures for the investigation and resolution of all Subscriber or City resident complaints that are received by the City. Such procedures shall be submitted to the City Administrator or designee. A Subscriber or City resident who has not been satisfied by following the Franchisee's procedures may file a written complaint with the City Administrator or designee who will investigate the

matter and in consultation with the Franchisee, as appropriate, attempt to resolve the matter. A Franchisee's performance in resolving Subscriber and resident complaints in a fair and equitable manner will be considered in connection with the Franchisee's renewal application. Franchisee shall maintain a complete list of all complaints received during the previous twelve (12) months from Subscribers that required a service call and were not resolved within seven (7) days of receipt and the measures taken to resolve them. This list shall be compiled on a quarterly basis and, if such unresolved complaints exist, submitted to the City upon request. In providing such information, Franchisee shall be obligated to protect Subscriber privacy in accordance with federal law.

(l) Franchisee shall permit the City Administrator or designee to inspect and test the Cable System's technical equipment and facilities upon reasonable notice which shall be not less than seventy-two (72) hours except in the case of an emergency, as determined by the City Administrator or designee.

(m) Franchisee shall abide by the following requirements governing communications with Subscribers, bills and refunds:

(1) Each Franchisee shall provide to Subscribers written information in each of the following areas at the time of installation, or at least once annually, and at any future time upon request by the Subscriber:

- a. How to use the Cable Service;
- b. Installation and service maintenance policies;
- c. The products and services offered;
- d. Prices and service options;

e. Channel positions of programming carried on the Cable System;

f. The Franchisee's procedures for the receipt and resolution of Subscriber complaints and the Franchisee's address and telephone number to which complaints may be reported if not otherwise provided.

g. The telephone number and address of the City's office designated to handle cable television complaints and inquiries;

h. The availability of a "lock-out" device;

i. The Franchise's information collection and disclosure policies for the protection of a Subscriber's privacy.

(2) In addition, each Franchisee shall provide written notice in its monthly billing, at the request of the City Administrator, of any City meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its license. The City Administrator shall make such a request in writing, with reasonable notice prior to the mailing of any billing by Franchisee, such that Franchisee's regular billing cycle shall not be interrupted. To the extent that any notice requested by the City would exceed the messaging limitations of the Franchisee's billing system and would thus cause the Franchisee to print and insert a separate document into the bill, the City may be requested to pay printing costs and incremental postage expenses for such notice.

(3) Franchisee's bills will be clear, concise and understandable.

(4) Refund checks will be issued promptly, but no later than the earlier of forty-five (45) days or the Subscriber's next billing cycle following the resolution of a

refund request, or the return of the equipment supplied by the Franchisee if Cable Service is terminated.

(5) Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

(6) A Franchisee shall provide Subscribers, the City Administrator, and the City Commission with at least thirty (30) days' advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of Cable Services offered over the Cable System if such change is within the control of the Franchisee, and in accordance with FCC regulations.

(n) A Franchisee shall, upon an affected Subscriber's request, provide a pro-rated 24-hour credit to the Subscriber's account for any period of four (4) hours or more within a 24-hour period during which a Subscriber experienced an outage of service or substantial impairment of service, whether due to a Cable System malfunction or other cause.

(o) Billing.

(1) The Franchisee's first billing statement after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.

(2) The Franchisee's billing statement must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(3) The Franchisee's billing statement must show a specific payment due date. Any balance not received by the due date may be assessed a late charge

consistent with applicable law. The late charge will appear on the following month's billing statement.

a. Franchisee shall provide reasonable notice to the City and Subscribers of the amount of any processing fees for late payments and the manner of imposing such fees. Any late fee that may be imposed shall be in an amount and manner consistent with applicable state and federal law. Late charges on unpaid bills shall not exceed Five Dollars (\$5.00). Such fee shall be deemed to represent the Franchisee's reasonable administrative costs, and in no event shall exceed eighteen percent (18%) per annum on the unpaid balance or the maximum amount of interest allowed by law. If a Subscriber disputes a bill on or before the due date, the Franchisee shall waive a late fee during the period until a final resolution of the dispute is agreed upon between the Franchisee and the Subscriber.

b. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

(4) The Franchisee must notify the Subscriber that he or she can remit payment in person at the Franchisee's office in the City and inform the Subscriber of the address of that office.

(p) Alteration of Service. Except as incident to an upgrade or rebuild of the Cable System, a Franchisee may not substantially alter the Cable Service being provided to a Subscriber (including by re-tiering, restructuring a tier or otherwise) without the

express affirmative permission of such Subscriber, unless it complies with this subsection.

(1) If a Franchisee wishes to alter the Cable Service being provided to a Subscriber (including by re-tiering, restructuring a tier or otherwise) in such a way that the Subscriber will no longer be able to obtain the same package of Cable Services then the Franchisee must provide the Subscriber with thirty (30) days' notice of such alteration, explain the substance and the full effect of the alteration, and provide the Subscriber the right within the thirty (30) day period following notice, to opt to receive any combination of Cable Services offered by the Franchisee.

(2) Except as provided herein or under applicable federal, state or local law, no charge may be made for any Cable service or product which the Subscriber has not affirmatively indicated, in a manner separate and apart from payment of the regular monthly bill, that the Subscriber wishes to receive.

(q) Franchisee shall certify in writing to the City as of January 1st and July 1st of each year, based upon internal due diligence by the Franchisee, that to the best of Franchisee's knowledge it is in substantial compliance with the standards set forth in this Section 78-299, said certification to be made as of a date within thirty (30) days of January 1st and July 1st. At the request of the City, for reasonable cause including but not limited to discrepancies between the reports provided to the City and the certification required herein, the Franchisee shall submit such documentation, as may be required, to demonstrate Franchisee's compliance with this Section 78-299. This documentation shall be submitted within thirty (30) days of the Franchisee's receipt of the City's request.

(r) Notwithstanding anything to the contrary, Franchisee shall not incorporate within any bulk residential subscriber contract the term of the Franchise granted by the City as the length of the term of a bulk contract(s). Franchisee shall make available to all residential bulk Subscribers the same level of service provided to Franchisee's residential Subscribers in the City, including, but not limited to, the requirements of Section 78-299 herein, unless the parties to the bulk contract have expressly agreed otherwise in writing.

(t) Responsibility for the administration of this Ordinance and any Franchise granted pursuant to this Ordinance, and for the resolution of all complaints against the Franchisee regarding the quality of service, equipment malfunctions, and related matters, is hereby delegated to the City Administrator or his designee, who is empowered, among other things, to settle, or compromise any controversy arising from operations of the Cable System by Franchisee, either on behalf of the City or any Subscriber, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is alleged to be in non-compliance with this Ordinance or a Franchise Agreement, the City Administrator or his designee shall have the power to require the Franchisee to provide service consistent with the terms of the Franchise, if in the opinion of the City Administrator or his designee such request for service is reasonable. Any person aggrieved by a decision of the City Administrator, including the Franchisee, may appeal the matter to the City Commission for hearing and determination. The City Commission may accept, reject or modify the decision of the City Administrator. No adjustment, settlement, or compromise, whether instituted by the City Administrator or by the City Commission, shall be contrary to the

provisions of this Ordinance or any Franchise issued pursuant to this Ordinance and neither the City Administrator nor the City Commission, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of the Ordinance or of the Franchise Agreement, or to interfere with any rights of Subscribers or any Franchisee under applicable federal, or state law or private contract.

(u) The City Administrator or designee shall have the authority to assess fines for violations of this Section 78-299 in accordance with the schedule set out below or as otherwise provided in a Franchise Agreement. The fines listed are to be assessed on a per violation basis with each day of a continuing violation constituting a separate violation, except for those customer service standards set forth in Subsections (d) and (e) above which are measured on a quarterly basis. With respect to such standards that are measured on a quarterly basis, the fines for such violations shall be assessed on a quarterly basis as follows; \$5,000 per quarter if the Franchisee falls below such standards by 10% or less; \$10,000 per quarter if the Franchisee falls below such standards by 20% or less and \$15,000 per quarter if the Franchisee falls below such standards by 25% or more. For example, if Franchisee has answered the telephone standards set forth in Subsection (d) on a quarterly basis 75% of the time, instead of the 90% required herein, the quarterly fine shall be \$10,000. Prior to assessing any fines set forth in the schedule below, the City Administrator or designee shall following the procedures set forth in Section 78-305 of this Ordinance

SCHEDULE OF FINES

Single Violation of:

Maximum
Fines

(a)	Section 78-299(b), hereof.	\$ 500.00
(b)	Section 78-299 (b), hereof.	\$ 500.00
(c)	Section 78-299 (c), hereof.	\$as detailed above
(d)	Section 78-299 (d), hereof.	as detailed above
(e)	Section 78-299 (e)(1-5), hereof.	\$ as detailed above
(f)	Section 78-299 (g)(1-3), hereof.	\$ 250.00
(g)	Section 78-299 (h), hereof.	\$ 350.00
(h)	Section 78-299 (i), hereof.	\$ 350.00
(i)	Section 78-299 (j), hereof.	\$ 350.00
(j)	Section 78-299 (k), hereof.	\$ 500.00
(k)	Section 78-299 (m)(1-5), hereof.	\$ 250.00
(l)	Section 78-299 (m)(6), hereof.	\$ 500.00
(m)	Section 78-299 (n), hereof.	\$ 250.00
(n)	Section 78-299 (o), hereof.	\$ 250.00
(o)	Section 78-299 (p), hereof.	\$ 250.00
(p)	Section 78-299 (q), hereof.	\$ 250.00
(q)	Section 78-299 (s), hereof.	\$ 250.00

(1) Prior to assessing a fine, the City Administrator or designee shall consider any justification or mitigating factor advanced in Franchisee's written response, including, but not limited to rebates or credits to the Subscriber, a cure or commencement of a cure of the violation, and the payment of any penalty to Palm Beach County for the same violation. The City Administrator or designee may, after consideration of the response of the Franchisee, waive or reduce any proposed fine.

(2) Subsequent to the notice of proposed fine to Franchisee and consideration of the Franchisee's response, if any, and after following the procedures set forth in Section 78-305 hereof, the City may issue an assessment of fine. Any fine will commence as of the date of the written notice specifying the violation at issue. The fine shall be paid within thirty (30) days of written notice of assessment to the Franchisee. The City may enforce payment of the refund or fine in any court having jurisdiction or if Franchisee challenges the assessment in a court of competent jurisdiction, within thirty (30) days of a final non-appealable decision that the assessment is valid. This fine shall constitute liquidated damages to the City for the violation and the City may enforce payment of the fine in any court having jurisdiction. It is the intent of the City to determine fines as a reasonable estimate of the damages suffered by the City and/or its Subscribers, whether actual or potential, and may include without limitation, increased costs of administration, enforcement and other damages difficult to measure.

(3) Any Person who intentionally files a false complaint against a Franchisee shall be subject to a fine, payable to the City, in the amount of \$50 for the first violation and \$100 for each subsequent violation.

(4) Intentional misrepresentation by a Franchisee in any response to a notice of proposed refund and/or fine shall be grounds for revocation of the Franchise.

(5) In addition to complying with the customer service standards set forth in this Ordinance or in any Franchise issued pursuant to this Ordinance, a Franchisee shall comply with all customer service standards applicable to Cable Systems of the FCC and any other applicable law governing the operations of the Cable System within the City. If during the term of any Franchise granted pursuant to this Ordinance, the FCC modifies the customer service standards applicable to Franchisee, the City may modify this Ordinance to reflect any such new customer service standards.

(v) The City expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any Franchise Agreement.

(w) The City and Franchisee recognize that the customer service standards set forth in this Section 78-299 reflect the current operating procedures of Franchisee. If Franchisee's current operating procedures change during the term of any Franchise granted pursuant to this Ordinance, the City agrees to meet with Franchisee to discuss appropriate modifications to such standards and to consider such reasonable modifications to the standards set forth herein as requested by a Franchisee to reflect any such new operating procedures. Upon request of the Franchisee, the City shall also discuss with Franchisee the need to continue such regulation in light of the competition that Franchisee may face in the provision of Cable Services to Subscribers and to consider such reasonable modifications to the customer service standards set forth herein in light of the competitive environment.

Section 78-300. Subscriber Privacy.

(a) A Franchisee shall at all times protect the privacy of all Subscribers to the full extent required by Section 631 of the Communications Act, 47 U.S.C. § 551 and state law.

(b) Unless otherwise permitted by federal or state law, neither the Franchisee nor its agents or employees shall, without the prior and specific written authorization of the Subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any Subscriber or Subscribers, or any information which identifies the individual viewing habits of any Subscriber or Subscribers.

Section 78-301. Discrimination Prohibited.

(a) No Franchisee in its rates or charges, or in the availability of the services or facilities of its Cable System, or in any other respect, may unlawfully discriminate against any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer promotional or discount rates to certain, but not all, Subscribers for a limited time without violating the provisions of this Section 78-301. A Franchisee shall not deny, delay, or otherwise burden service or discriminate against Subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A Franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.

(b) A Franchisee shall not deny Cable Service to any potential Subscriber because of the income of the residents of the area in which the Subscriber resides.

(c) The Franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

Section 78-302. Use of Streets.

(a) Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a Franchisee shall be done under the direction of the City under permits issued for work by the proper officials of the City, and shall be done in such manner as to give the least inconvenience to the inhabitants of the City. A Franchisee shall, at its own cost and expense, and in a manner approved by the City, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public Streets, ways, and easements of the City.

(b) Except to the extent required by law, a Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the City by reason of traffic conditions, public safety, Street construction, Street resurfacing or widening, change of Street grade, installation or sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility improvements; provided, however, that the Franchisee shall, in all such cases, have the privilege of abandoning any property in place.

(c) A Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the City, in which case no such payment shall be required. The Franchisee shall be given not less than five (5) calendar days' advance notice to arrange for such temporary wire changes.

(d) A Franchisee shall have the authority to trim the trees or other natural growth upon and overhanging the Streets so as to prevent the branches of such trees from coming in contact with the wires, cables and other equipment of the Franchisee, except that, at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Franchisee.

(e) A Franchisee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible. Copies of agreements for use of conduits or other facilities shall be filed with the City as required by the Franchise Agreement or upon City request.

(f) All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The City may issue such rules and regulations concerning the installation and maintenance of a Cable System installed in, on, or over the Streets, as may be consistent with this Ordinance and the Franchise Agreement.

(g) All safety practices required by law shall be used during construction, maintenance and repair of a Cable System. A Franchisee shall not place facilities, equipment or fixtures where they will interfere with any gas, electric, telephone, water, sewer or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the City of their use of any Street or any other public rights-of-way.

(h) A Franchisee shall, at all times:

(1) Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the City's Building Code and Electrical Safety Ordinances and any other applicable Building or Electrical Safety Code, and in such manner that they will not interfere with any installations of the City.

(2) Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the Streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located.

(i) On Streets where both electrical and telephone utility wiring are located underground, either at the time of initial construction of a Cable System or at any time thereafter, a Franchisee's cable shall also be located underground at the Franchisee's expense. Between a Street and a subscriber's residence, a Franchisee's cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone utility wiring is aerial, a Franchisee may install aerial cable except where a property owner or resident requests underground

installation and agrees to bear the additional cost of such installation over and above the cost of aerial installation.

(j) In the event the use of any part of a Cable System is discontinued for any reason so as to result in Franchisee's failure to provide service to any portion of its Franchise Area for a continuous period of twelve (12) months, or in the event such System or property has been installed in any Street without complying with the requirements of this Ordinance or a Franchise Agreement, or the Franchise has been terminated, canceled or expired, the Franchisee, within thirty (30) days after written notice by the City, shall commence removal from the Streets of all such property as the City may require.

(k) The City may extend the time for the removal of Franchisee's equipment and facilities for a period not to exceed one hundred eighty (180) days, and, thereafter, such equipment and facilities may be deemed abandoned.

(l) In the event of such removal or abandonment, the Franchisee shall restore the area to as good a condition as prior to such removal or abandonment.

Section 78-303. Renewal of Franchise.

Renewal shall be conducted in a manner consistent with Section 626 of the Communications Act, 47 U.S.C., § 546. The following additional requirements, unless in conflict with applicable law, shall apply:

(a) Upon completion of the review and evaluation process set forth in Section 626(a)(1)(2) of the Communications Act, 47 U.S.C., § 546, should that process be invoked, the City shall notify the Franchisee by certified or registered mail that it may file a formal renewal application in the form of a renewal proposal. The notice shall

specify the information to be included in the renewal Application and the deadline for filing the Application, which shall be no earlier than thirty (30) calendar days following the date of the notice.

(1) The Application shall comply with the requirements of Section 78-288 hereof, to the extent applicable to franchise renewals and provide the specific information requested in the notice or such other information as is reasonably designated by the City in the notice requesting a formal renewal proposal. If the Franchisee does not submit a formal renewal Application by the date specified in the City's notice to the Franchisee given pursuant to this subsection, which shall in no event be less than 120 days, the City may take such action as appropriate under law.

(2) Upon receipt of the formal renewal Application, the City shall publish notice of its receipt and make copies available to the public. The City, following prior public notice of no less than ten (10) days, may hold one or more public hearings on the renewal Application.

(b) After the public hearing(s) on the renewal Application is held, the City Commission may either award a Franchise pursuant to a request for proposal, and thereby renew the Franchise; or only after a public hearing, properly noticed, pass a resolution that makes a preliminary assessment that sets forth the grounds that the Franchise should not be renewed.

(c) If a preliminary assessment is made that a Franchise should not be renewed, at the request of the Franchisee or on its own initiative, the City will commence a proceeding in accordance with Section 626(c) of the Communications Act, 47 U.S.C., § 546(c) to address the issues set forth in Section 626(c)(1)(A)-(D) of the

Communications Act, 47 U.S.C., § 546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with 47 U.S.C. § 546(b) shall be based on one or more adverse findings made with respect to the factors described in 47 U.S.C. § 546(c)(1)(A)-(D), pursuant to the record of proceedings under 47 U.S.C. § 546(c). The City shall not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under Section 546(c)(1)(A) or on events considered under Section 546(c)(1)(B) unless the City has provided the Franchisee with notice and opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or the Franchisee gives written notice of a failure or inability to cure and the City fails to object within a reasonable time after receipt of such notice.

(d) Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in Section 626(a) of the Communications Act, 47 U.S.C., § 546(a), or submitted within such time frame and the parties agree that the informal process shall be first initiated, shall be deemed an informal proposal for renewal and shall be governed in accordance with Section 626(h) of the Communications Act, 47 U.S.C., § 546(h). The City may hold one or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the City Commission shall determine whether the Franchise should be renewed and the terms and conditions of any renewal. If the City Commission grants a renewal Application, the City and the Franchisee shall agree on the terms of a Franchise Agreement, pursuant to the procedures specified herein, before such renewal becomes effective.

(e) If renewal of a Franchise is lawfully denied, the City may acquire

ownership of the Cable System or effect a transfer of ownership of the Cable System to another person upon approval of the City Commission pursuant to Section 547 of the Communications Act. The City may not acquire ownership of the System or effect a transfer of ownership of the Cable System while an appeal of a denial for renewal is pending in any court pursuant to the Communications Act, 47 U.S.C. § 546(e).

(f) If renewal of a Franchise is lawfully denied and the City does not purchase the Cable System or approve or effect a transfer of the Cable System to another Person, and no appeal to a court is pending, the City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

Section 78-304. Transfers.

(a) No transfer, sale or assignment of any interest in a Franchise shall occur without prior City approval, which shall not be unreasonably withheld.

(b) An Application for a transfer, sale or assignment of any interest of a Franchise shall meet the requirements of Section 78-288 hereof, and provide complete information on the proposed transaction, including, but not limited to, details on the legal, financial, technical and other material and lawful qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. Except in the case of a pro forma transfer as defined herein, the Application shall provide, at a minimum, the information required in Section 78-288 or such other information as is specified in a Franchise Agreement in lieu of the information required in Section 78-288. Upon written request, the Applicant shall provide to the City as additional information any and all written information, other than the information required to be provided by this Ordinance and the

Franchise Agreement, that has been provided to Palm Beach County in connection with the transfer if such information is relevant to the City. The City hereby reserves the right to request such additional information as it may reasonably require to consider the Application, however, such requests shall not have the effect of tolling the 120 day automatic approval period provided by federal law. However, nothing herein shall be deemed a waiver of the City's right to deny approval of a transfer within the 120 day period.

(c) The Application process shall not include any pro forma transfers, as defined herein, that are related solely to any restructuring, recapitalization or refinancing which does not change the effective control of the Franchisee or to any mortgages and pledges of Franchisee's securities, but shall require proper notice to the City pursuant to the terms of the Ordinance or the Franchise Agreement.

(d) In making a determination on whether to grant an Application for a transfer of a Franchise, the City Commission shall consider the legal, financial, technical and other lawful and material qualifications of the transferee to operate the Cable System; whether the incumbent cable operator is in substantial compliance with the material terms of its Franchise Agreement and this Ordinance and, if not, the proposed commitment of the transferee to cure such noncompliance; and whether operation by the transferee would adversely affect Cable Services to Subscribers. The City Commission shall not unreasonably withhold approval to any such transfer.

(e) No franchise transfer Application shall be granted unless the transferee, if the Franchise holder, agrees in writing to abide by and accept all terms of this Ordinance and a Franchise Agreement, and to assume all obligations and liabilities of the previous

Franchisee, whether known or unknown. If such transferee will not be the holder of the Franchise, such transferee will sign an acknowledgement ensuring compliance by the Franchisee with the Franchise Agreement and this Ordinance. The City shall certify to Franchisee, upon request, all issues of Franchisee's performance that are known and pending.

(f) Subject to applicable law, approval by the City of a transfer of a Franchise does not constitute a waiver or release of any of the rights of the City under this Ordinance or the Franchise Agreement, whether arising before or after the date of the transfer.

(g) Pursuant to the procedures set forth in Section 78-305, failure to obtain the consent of the City with respect to this Section 78-304 may result in the imposition of liquidated damages in the amount of one thousand five hundred dollars (\$1,500) per day for failure to receive such consent of the City for a transfer or change of control; provided, however, that no such liquidated damages shall be owed if the City's denial of consent is unlawful or unreasonable.

Section 78-305. Franchise Violations.

(a) In addition to any other remedies available at law or equity, the City may apply any one or combination of the following remedies in the event a Franchisee violates a provision of this Ordinance or a Franchise Agreement after following the procedures set forth in Subsections (d-h) below.

(1) Impose liquidated damages in an amount of not less than Two Hundred Fifty Dollars (\$250) per day or part thereof per individual violation, or as otherwise expressly provided in this Ordinance or in a Franchise Agreement. Payment of

liquidated damages by the Franchisee will not relieve the Franchisee of its obligation to comply with the Franchise Agreement and the requirements of this Ordinance, provided, however, that cure of the alleged violation and payment of liquidated damages pursuant to this section shall be considered full and final resolution of the alleged violation and may not be considered as an event of noncompliance for such period.

(2) Revoke the Franchise pursuant to the procedures specified in Section 78-306 hereof.

(3) In addition to or instead of any other remedy provided herein, the City may seek equitable relief from any court of competent jurisdiction.

(b) In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City determines are appropriate to the public interest.

(c) Failure of the City to enforce any requirements of a Franchise Agreement or this Ordinance shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(d) If the City (or the City Administrator or designee with respect to Section 78-299 of this Ordinance) believes that Franchisee has failed to perform any obligation under this Ordinance or a Franchise Agreement or has failed to perform in a timely manner, the City shall notify Franchisee in writing, stating with reasonable specificity the nature of the alleged default. Franchisee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the City, contesting the City's assertion that a default

has occurred, and requesting a meeting in accordance with Subsection (e), below; or

(2) Cure the default (except Franchisee shall have ninety (90) days with respect to customer service standards measured on a quarterly basis); or

(3) Notify the City that Franchisee cannot cure the default within the thirty (30) days (or ninety (90) days where applicable), because of the nature of the default. In the event the default cannot be cured within the applicable time frame, Franchisee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City shall set a meeting in accordance with Subsection (e) below to determine whether additional time beyond the time specified above is indeed needed, and whether Franchisee's proposed completion schedule and steps are reasonable.

(e) If Franchisee does not cure the alleged default within the cure period stated above, or by the projected completion date under Subsection (d)(3), or denies the default and requests a meeting in accordance with (d)(1), or the City orders a meeting in accordance with Subsection (d)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Franchisee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Franchisee's receipt of notice of the meeting. At the meeting, Franchisee shall be provided an opportunity to be heard and to present evidence in its defense.

(f) If, after the meeting, the City determines that the Franchisee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be

imposed.

(g) If, after the meeting, the City determine that a violation exists and that Franchisee has not corrected the same in a satisfactory manner or did not promptly commence and diligently process to correct the violation, the City may:

(1) Impose penalties and/or liquidated damages in accordance with Subsection (a) above and withdraw such amount from the security fund required in this Ordinance or a Franchise Agreement as monetary damages;

(2) Recommend the revocation of this Franchise pursuant to the procedures in Section 78-306 below; or

(3) Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

(h) If the City (or the City Administrator or designee in the case of fines assessed in accordance with Section 78-299 of this Ordinance) elects to assess liquidated damages in accordance with this Section 78-305, then such election shall bar the City from instituting revocation proceedings for a period of one hundred twenty (120) days. Thereafter, if the Franchisee remains in non-compliance with the requirements of this Ordinance or a Franchise Agreement, the City may institute revocation proceedings against the Franchisee in accordance with the provisions of Section 78-306 below.

(1) Notwithstanding anything to the contrary, any fines/liquidated damages imposed herein shall be calculated as accruing from the date of written notice to the Franchisee of the violation.

(2) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City Commission, provided that any final

determination may be subject to appeal to a court of competent jurisdiction under applicable law.

Section 78-306. Revocation.

(a) The City may revoke and rescind all rights and privileges associated with a Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Franchisee fails to perform any material obligation under this Ordinance or in a Franchise Agreement between under the City and Franchisee;

(2) If Franchisee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Franchisee practices any fraud or deceit upon the City or Subscribers; or

(4) If Franchisee willfully makes a material misrepresentation of fact in the Application for or negotiation of a Franchise, a renewal or a transfer.

(b) Prior to forfeiture or termination of the Franchise, the City shall give written notice by certified mail to the Franchisee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. If within thirty (30) days following receipt of such written notice from the City to the Franchisee, the Franchisee has not cured such violation or breach, or has not entered into a written agreement with the City on a program to cure the violation, or has not demonstrated that the violation is incurable, or has filed a written response to the City demonstrating that no violation has occurred, the City

may then seek a termination of the Franchise by the City Commission in accordance with this subsection.

(c) Any proceeding under the subsection above shall be conducted by the City Commission and open to the public. Franchisee shall be afforded at least thirty (30) days prior written notice of such proceeding.

(1) At such proceeding, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Commission shall hear any Persons interested in the revocation, and shall allow Franchisee an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Commission shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the security fund forfeited; or if the breach at issue is capable of being cured by Franchisee, direct Franchisee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Commission determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Franchisee. Franchisee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within one hundred twenty (120) days of the date of the decision.

(3) Franchisee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Commission may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

(d) If the City revokes a Franchise, or if, for any other reason, a Franchisee abandons the Cable System, terminates or fails to operate or maintain service to its Subscribers for a period of thirty (30) days, the following procedures and rights are effective:

(1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

(2) The City, by resolution of the City Commission, may acquire ownership, or effect a transfer of the Cable System, in accordance with Section 627 of the Communications Act.

(3) If a Cable System is abandoned by a Franchisee, the City may sell, assign or transfer all or part of the assets of the System.

(e) Where the City has issued a Franchise specifically conditioned in the Franchise Agreement upon the completion of construction, System upgrade or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade, or to comply with such other specific obligations as required may result in revocation of the Franchise, unless the City, at its discretion and for good cause demonstrated by the Franchisee, grants an extension of time.

(f) No adverse action against a Franchisee may be taken by the City pursuant to this section except as consistent with the procedures set forth in this section or as otherwise provided by applicable law, including a noticed public hearing at which the Franchisee is given an opportunity to participate.

Section 78-307. Continuity of Service Mandatory.

(a) It is the right of all Subscribers to receive all available services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

(b) In the event of a termination or transfer of a Franchise for whatever reason, the Franchisee shall ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. The Franchisee shall cooperate with the City to operate the System for a temporary period following termination or transfer as necessary to maintain continuity of service to all Subscribers. The temporary period will not exceed six (6) months without the Franchisee's written consent. During such period, the Cable System shall be operated under such terms and conditions as the City and the Franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to Subscribers and that will provide reasonable compensation to the cable operator.

(c) In the event a Franchisee fails to operate the System for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the System or designate an operator until such time as the Franchisee restores service under conditions acceptable to the City or until a permanent operator is selected. If the City is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the City for all costs or damages resulting from the

Franchisee's failure to perform. Additionally, the Franchisee will cooperate with the City to allow City employees and/or City agents access to the Franchisees' facilities and premises for purposes of continuing System operation.

Section 78-308. Rates.

(a) At such time as federal law permits rate regulation, the City reserves all rights to implement and impose such regulation, and may do so by amendment to this Ordinance, by separate ordinance, by amendment to a Franchise Agreement, or in any other lawful manner.

(b) Nothing in this Ordinance shall prohibit the City from regulating rates for cable services to the full extent permitted by law.

(c) Should a Franchisee desire to change any rate or charge, it shall comply with all laws with respect thereto.

(d) Notwithstanding anything to the contrary, a Franchisee shall provide to the City Administrator notice of any and all changes to all Subscriber rates no less than thirty (30) days prior to the effective date of such change.

Section 78-309. Performance Evaluation.

The City may conduct periodic, but not more than once during any twelve (12) month period unless for specific cause, performance evaluations of a Franchisee as the City determines is necessary. A Franchisee shall cooperate with these evaluations reasonably and in good faith. If the City implements a survey of cable Subscribers in connection with a performance evaluation, the City may require a Franchisee to distribute the City's questionnaire to its Subscribers at the City's expense, provided that the Franchisee shall have the right to review the questionnaire prior to its distribution by

Franchisee. Upon request and upon reimbursement of the City's copying costs, the Franchisee may inspect or receive copies of all responses.

Section 78-310. Administration.

(a) The City Administrator, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and Franchise Agreements. The City Administrator or designee shall be empowered to take all administrative actions on behalf of the City, except for those actions specified in this Ordinance that are reserved to the City Commission. The City Administrator or designee may recommend that the Commission take certain actions with respect to the Franchise. The City Administrator or designee shall keep the City Commission apprised of developments in cable and provide the City Commission with assistance, advice and recommendations as appropriate.

(b) To the extent permitted by federal and state law, the City Commission shall have the sole authority to regulate rates for cable services, grant Franchises, authorize the entering into of Franchise Agreements, modify Franchise Agreements, renew or deny renewal of Franchises, revoke Franchises, and authorize the transfer of a Franchise.

Section 78-311. Force Majeure.

In the event a Franchisee's performance of or compliance with any of the provisions of this Ordinance or the Franchisee's Franchise Agreement is prevented by a cause or event not within the Franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that Franchisee uses all practicable means to expeditiously

cure or correct any such inability to perform or comply. For purposes of this Ordinance and any Franchise Agreement granted or renewed hereunder, causes or events not within a Franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes, loss of utility service not as a result of any action or inaction by Franchisee and restraints imposed by order of a governmental agency or court (unless such order is procured at Franchisee's behest). Causes or events within Franchisee's control, and thus not falling within this section, shall include, without limitation, Franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Franchisee's directors, officers, employees, contractors or agents.

Section 78-312. Applicability.

This Ordinance shall be applicable to all cable Franchises granted, renewed, modified or transferred on or after the effective date hereof, and shall apply to all cable Franchises granted prior to the effective date of this Ordinance, to the full extent permitted by state and federal law.

Section 78-313. Municipal Cable System Ownership Authorized.

(a) To the full extent permitted by law, the City may acquire, construct, own and/or operate a Cable System.

(b) Nothing in this Ordinance shall be construed to limit or expand in any way the ability or authority of the City to acquire, construct, own and/or operate a Cable System to the full extent permitted by law.

Section 78-314. Reservation of Rights.

(a) The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

(b) The City reserves the right to the extent permitted by applicable law to exercise the power of eminent domain to acquire the property of the Franchisee's Cable System. Nothing herein is intended to restrict or expand such rights as granted by the Constitution and laws of the State of Florida.

(c) The City shall at all times have the right, upon reasonable notice and during normal business hours, to examine and copy a Franchisee's records and to inspect a Franchisee's facilities to the extent needed to monitor a Franchisee's compliance with and performance under this Ordinance and the Franchisee's Franchise Agreement. However, the City shall not copy any records that have been identified as confidential and proprietary pursuant to Ch. 119 Florida Statutes.

Section 78-315. Notices.

All written correspondence between the City and Franchisee shall be delivered via hand delivery, certified mail or such other means so as to provide a return receipt. Notice to the Franchisee shall be deemed effective upon written receipt. Notice to the City shall be effective upon written receipt by the City Administrator.

SECTION II. Repeal of Conflicting Ordinances.

Ordinance No. 3100-97, in its entirety, and all preexisting ordinances or resolutions or parts thereof conflicting or inconsistent with the provisions of this Ordinance are hereby repealed; provided, however, that nothing in this Ordinance shall be interpreted or construed to terminate or revoke the grant and subsequent amendment of Cable Television Franchise by City Ordinance No. 1040-68, as amended, until or

unless the aforesaid ordinances are superseded or repealed and a Franchise Agreement is entered into or renewed pursuant to this Ordinance.

SECTION III. Severability.

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any Person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION IV. Inclusion in the Code of Ordinances.

It is the intent of the City of West Palm Beach that specific authority is hereby granted to codify this Ordinance. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of West Palm Beach, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "section," "articles," or any other appropriate word or phrases in order to accomplish such intention.

SECTION V. Effective Date.

This Ordinance shall take effect and be in force immediately upon its passage and adoption.

FIRST READING, this 18th day of October, 2004.

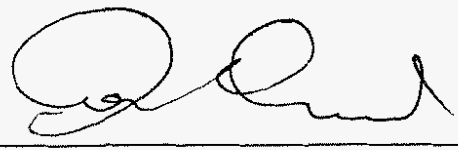
SECOND READING AND FINAL PASSAGE, this 25th day of Oct, 2007.

(CORPORATE SEAL)

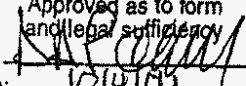
CITY OF WEST PALM BEACH
FLORIDA BY ITS CITY COMMISSION

ATTEST:


City Clerk

By: 
Presiding Officer

Last printed 10/1/04

CITY ATTORNEY'S OFFICE
Approved as to form
and legal sufficiency
By: 
Date: 10/4/07

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made this 25th day of October, 2004, by and between the **CITY OF WEST PALM BEACH** (the "City") and **Adelphia Cablevision of West Palm Beach IV, LLC**, a subsidiary of **Adelphia Communications Corp.** ("Adelphia").

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §521 ("Communications Act"), the City may grant or renew a Franchise to construct, operate and maintain a Cable Television System; and

WHEREAS, the City is authorized to regulate the construction, installation, operation and maintenance of Cable Television Systems pursuant to federal, state and local law; and

WHEREAS, on October 25, 2004, the Commission adopted Ordinance No. 3806-04 entitled "Cable Television" to update the terms and conditions for the operation of Cable Systems and the application, procedures and requirements relating to the grant of Franchises for the construction, installation, operation and maintenance of Cable Systems' equipment and facilities in the City's public rights-of-way (the "Ordinance"); and

WHEREAS, Franchisee's existing Franchise granted by the City expired on October 16, 2003; and

WHEREAS, Adelphia desires to renew its Franchise to construct, install, maintain, and operate a Cable System in the City and has applied to the City for a renewal of such Franchise; and

WHEREAS, the construction, installation, maintenance, and operation of such a Cable System involves the use and occupation of the Streets of the City, over which the City exercises governmental control; and

WHEREAS, the Commission has evaluated Adelphia's application in light of the requirements of federal and state law and the Ordinance and has conducted public hearings concerning Adelphia's renewal request and renewal application; and

WHEREAS, the Commission has considered all information presented to it by Adelphia, the City staff, the City's consultants, and the public; and

WHEREAS, based on said information, the Commission has determined that a renewal of Adelphia's nonexclusive Franchise to construct, install, maintain and operate a Cable System in the City, subject to the terms and conditions set forth herein and in the Ordinance, is consistent with the public interest; and

WHEREAS, the City and Adelphia have reached agreement on the terms and conditions of such a Franchise Agreement.

NOW, THEREFORE, in consideration of the City's renewal of Adelphia's Franchise to own, construct, install, maintain and operate a Cable System within the City, and to use and occupy the Streets of the City for that purpose, and in consideration of Adelphia's promise to provide Cable Service to residents of the City pursuant to the Ordinance and under the terms and conditions set forth herein, and in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Franchise is hereby granted and

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. Except as otherwise provided specifically herein, the definitions in Chapter 78 of the City Code, shall govern this Agreement. In addition, the following definitions shall apply:

A. "Commercially Feasible" shall mean that level of technical performance, equipment, components and cable services (without reference to the content of the cable service) which has been developed and demonstrated to be generally accepted and used in the cable industry, excluding (1) "tests" involving new products offered for one year or less, or (2) products that the Franchisee can demonstrate would not provide a rate of return comparable to other markets where such products are offered. Nothing herein shall be construed to require a Franchisee to employ any specific transmission technology or to carry any particular programming services.

B. "Effective Date" shall mean the date upon which this Agreement commences, as provided in Section 3 hereof.

C. "Franchisee" or "Adelphia" shall mean Adelphia Cablevision of West Palm Beach IV, LLC, a subsidiary of Adelphia Communications Corp. ("Adelphia"), and its lawful and permitted successors, assigns and transferees pursuant to Sections 32 and 33 of this Agreement and the Ordinance.

D. "Franchise Area" shall mean the entire territory within the corporate limits of the City and as those limits may change from time to time through annexation or contraction during the term of this Agreement.

E. "Ordinance" shall mean Chapter 78 of the Code of the City of West Palm Beach, Florida, as such existed on the Effective Date of this Agreement.

Section 2. Grant of Franchise. Subject to the terms of this Agreement and the Ordinance, the City hereby grants Franchisee a Franchise for the non-exclusive right and privilege to own, construct, install, maintain and operate a Cable System within the Franchise Area.

Section 3. Term of Agreement.

A. The Agreement shall commence upon the date that the Ordinance approving this Agreement is adopted by the City Commission (the "Effective Date"), provided that the Franchisee has provided to the City on or before the Effective Date the written acceptance required by Section 40 herein, the proof of insurance required by Section 8 herein, and any and all payments due as of the Effective Date pursuant to this Agreement and the Ordinance. Franchisee shall provide to the City the security fund as required in Section 10 herein within fifteen (15) days following such adoption. Failure to provide the written acceptance, the proof of insurance, the security fund and the payments as required herein may result in a denial or delay of the grant.

B. This Agreement shall be for a period of twelve (12) years commencing from the Effective Date of this Agreement and terminating on October 24, 2016, unless otherwise sooner terminated or otherwise extended in accordance with the terms of this Agreement and the Ordinance.

Section 4. Non-Exclusive Franchise. The Franchisee's right to use and occupy the Streets and rights-of-way shall be non-exclusive pursuant to Section 78-285 of the Ordinance. The City reserves the right to grant a similar or other use of said Streets, or any portions thereof, to any person, including the City, at any time during the term of this Agreement consistent with Florida Statute 166.046 as in effect on the date hereof.

Section 5. Agreement Subject to Communications Act, State Law and City Code.

A. This Agreement is subject to and shall be governed by all terms, conditions and provisions of the Communications Act, any amendments thereto, and any other applicable provision of federal, state or local law of general applicability, existing or hereafter adopted.

B. This Agreement is subject to and shall be governed by all terms, conditions and provisions of the Ordinance, as it existed on the Effective Date of this Agreement.

C. Franchisee hereby accepts all terms and conditions of the Ordinance as it exists on the Effective Date of this Agreement.

D. In the event of a conflict between this Agreement and the Ordinance, this Agreement shall control as provided herein.

Section 6. Franchisee Subject to Other Laws, Police Power.

A. Franchisee is subject to and agrees to comply with all generally applicable local, City, state and federal laws, ordinances, rules, regulations and orders, existing or hereafter lawfully adopted. The City and the Franchisee agree to comply with all applicable Florida Statutes.

B. The Franchisee shall at all times be subject to all lawful exercise of the police power of the City, and this Agreement is not intended to limit or expand the City's exercise of such power in any way.

C. The parties expressly acknowledge that the Franchisee's obligations under this Agreement may not be unilaterally altered, whether by resolution, proclamation, or amendment of the Ordinance unless otherwise stated herein or expressly permitted by applicable federal or state law.

Section 7. Reservation of Rights.

A. The Franchisee is subject to and agrees to comply with all applicable federal, state and local law of general applicability subject to Section 6(c) above.

B. The City reserves the right to acquire, purchase, own and/or operate a Cable System to the extent permitted by applicable state and federal law.

Section 8. Insurance.

A. Franchisee shall obtain and maintain insurance of the types and minimum amounts required in Section 78-291 of the Ordinance in such a manner as to comply with each and every requirement of that section.

B. The Franchisee shall provide proof to the City of compliance with this section as of the effective date of this Franchise, or as otherwise agreed to in writing by the City Administrator or his designee. Should Franchisee fail to provide the City with proof of insurance as required herein, Franchisee shall be subject to fines and other enforcement remedies, including but not limited to revocation pursuant to the procedures set forth in Section 78-306 of the Ordinance.

C. In the event of any request for modifications or transfers of the Franchise, Franchisee shall provide proof to the City of compliance with this Section no later than thirty days (30) after the effective date the relevant transaction is completed. Should Franchisee fail to provide the City with proof of insurance as required in this Subsection (C), Franchisee shall be subject to fines and other remedies, including a resolution denying the transaction or revoking any prior conditional approval requested by the Franchisee, pursuant to Section 78-289 of the Ordinance.

D. All certificates of insurance shall be filed and maintained with the City Administrator. The certificates of insurance filed pursuant to this subsection must contain a

statement that the City shall receive at least thirty (30) days advance written notice of any cancellation of insurance.

Section 9. Indemnification of the City. Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its elected or appointed officials, employees, committees and boards, in accordance with Section 78-291 of the Ordinance. The City agrees to notify Franchisee, in writing, within twenty (20) days of the City receiving notice of any issue that may require indemnification pursuant to Section 78-291. To the extent Section 78-291 requires the consent of the City Attorney, such consent shall not be unreasonably withheld.

Section 10. Security Fund.

A. In compliance with Section 78-292 of the Ordinance, Franchisee shall provide to the City a performance bond in the amount of two hundred thousand dollars (\$200,000) to ensure the faithful performance of all provisions of this Agreement, the Ordinance, and all applicable local, state and federal law. The bond shall be in a form and with a surety reasonably acceptable to the City's Risk Manager.

B. If thirty (30) calendar days after written notice from the City Franchisee fails to pay to the City any fees or taxes due and unpaid, or any liquidated damages owed pursuant to the Ordinance, or this Agreement, damages, costs or expenses that the City has incurred by reason of any act, omission or default of Franchisee in connection with this Agreement or the Ordinance, the City may apply to the surety for withdrawal of that amount, plus interest and any costs. Upon such withdrawal or claim, the City shall notify Franchisee in writing of the amount and date of the withdrawal at least ten (10) business days prior to a withdrawal. Any action by the City

Administrator or designee to draw upon the performance bond hereunder may be appealed to the City Commission for hearing and determination, subject to the terms set forth in the Ordinance.

C. The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved in this Agreement or the Ordinance or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect any other right the City may have.

Section 11. Construction Bond. In compliance with Section 78-293 of the Ordinance, prior to any significant Cable System construction, upgrade, rebuild or other significant work in the Streets of the City, Franchisee shall post a construction bond in favor of the City hereof in the amount of fifty percent (50%) of the cost of such construction or two hundred fifty thousand dollars (\$250,000), whichever is less. Such bond shall be subject to the approval of the City's Risk Manager, such approval to be not unreasonably withheld. The City shall be provided with thirty (30) days prior notice of intent to cancel or not renew the bond. The bond shall be maintained until such construction is completed and activated and for a period of twelve (12) months thereafter. Franchisee shall notify the City Administrator in writing when it believes the construction has been completed and the date on which it believes the bond may be eliminated pursuant to this Section 11. The City agrees to return the bond to the Franchisee or to sign such documents as are required to release the bond.

Section 12. Use of Streets; Use of City Private Property.

A. Franchisee agrees at all times to comply with and abide by all generally applicable and lawful provisions of the City Code, the Ordinance, this Agreement, and applicable state, local and federal law with respect to use of the Streets.

B. As required by the City, and upon receipt of written notice, Franchisee shall remove, relocate, replace or modify, at its own expense to the extent other cable Franchisees with facilities in the Streets are so required (except as otherwise required by applicable law) its facilities within any public Streets as set forth in the Ordinance, provided, however, that should the City require such removal, relocation, replacement or modification in order to construct and install its own competitive Cable System, then the City shall pay the expense. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the City shall reimburse or cooperate with the Franchisee in the same manner in which other Persons affected by the requirement are reimbursed, as set forth herein and as provided by state or federal law. If funds are available for the purpose of defraying the above costs by federal or state law, the City shall cooperate in assisting Franchisee in obtaining such funds. If funds are available for the purpose of defraying the above costs under local law, Franchisee shall be entitled to reimbursement if such local law includes cable operators in the reimbursement. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Franchisee if, as a matter of law or regulation, Franchisee is not permitted to apply on its own behalf.

C. In cases of new construction or property development where utilities are to be placed underground, the City agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Franchisee at least thirty (30) days prior notice of such construction or development, and of the particular dates on which open trenching will be available for Franchisee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Franchisee's expense. Franchisee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to

the development shall be borne by the developer or property owner; except that if Franchisee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Franchisee.

Section 13. System Rebuild.

A. As of the Effective Date hereof, Franchisee shall have completed and activated the upgrading of its Cable System serving the City. The relevant Cable System will, at minimum, pass frequencies of at least 860 MHz and will be fully operational.

B. As of the Effective Date, the Franchisee shall provide to the City a complete set of strand System maps and such reasonable documentation as may be required by the City.

C. For any subsequent upgrade or rebuild of the Cable System, Franchisee shall submit to the City a schedule of its planned cable routing, work areas and pedestal/power supply locations during the upgrade or rebuild construction process in accordance with the City's generally applicable requirements, including but not limited to:

(1) Areas within the City where the upgraded or reconstructed Cable System will initially be available to Subscribers, including a proposed schedule of the Cable System activation.

(2) Areas, if any, within the City where the Cable System cannot reasonably be upgraded or reconstructed due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

D. During the construction, Franchisee shall provide monthly written updates and, upon request of the City Administrator or designee, meet with the City monthly, or as otherwise agreed to between the City and Franchisee, to review the progress of the construction of the Cable System and to coordinate, as may be necessary, to minimize disruption of the rights-of-way in the City while attempting to avoid delay in the Cable System construction schedule.

E. Franchisee agrees to provide reasonable notice to all Subscribers of the Cable System upgrade or rebuild and the timing of such through the use of door hangers, direct mail, and over the Cable System prior to the initiation of and during construction.

Section 14. Institutional Network. The Franchisee may provide Institutional network services to the City in accordance with the terms of a separate agreement between the parties.

Section 15. Minimum Facilities and Services.

A. Upon completion of the System rebuild required by Section 13 hereof, the Cable System of the Franchisee shall comply with the Ordinance and all terms and conditions hereof including, but not limited to, upstream Video Channel capacity through return lines from City Hall to the Franchisee's headend and in the amount necessary to satisfy the PEG Access Channel requirements set forth in Section 78-296 of the Ordinance and Section 17 hereof.

B. Franchisee's Cable System shall transmit to Subscribers any stereo signals and any other form of advanced television signals received and carried by the Cable System pursuant to applicable federal law.

C. Franchise shall fully comply with all applicable laws concerning handicapped or disabled persons.

Section 16. Technological Improvements to System.

A. Throughout the term of this Agreement, compliance with this Section 16 shall be deemed compliance by the Franchisee with Section 78-294 of the Ordinance.

B. State-of-the-Art.

1. Beginning in October, 2007 and every three (3) years thereafter throughout the term of this Agreement, the Franchisee shall upon written request of the City Administrator submit a written report to the City in a form reasonably satisfactory to the City Administrator, that discusses the Cable System capacity and Cable Services offered on any of the most recently constructed or upgraded Cable Systems owned and operated by the Franchisee, its parent or Affiliates in the United States where the number of Subscribers within a single franchise area is comparable to the number of Subscribers on Franchisee's Cable System in the City. The purpose of this report is to discuss the status of the Cable System in relation to State-of-the-Art.

2. Beginning in October, 2007 and every three (3) years thereafter throughout the term of this Agreement, the Franchisee shall, upon the written request of the City Administrator, submit a written report to the City Administrator in a form subject to the reasonable satisfaction of the City Administrator, and agree to meet with the City Administrator or designated City staff, to discuss the Cable System capacity and Cable Services offered on any and all Cable Systems in the Florida counties set forth on Exhibit A that are owned and operated by the Franchisee, its parent or Affiliates ("Adelphia") as of the Effective Date of this Agreement (the "Florida Systems") and that are not available to Subscribers on the Cable System serving the City. The purpose of this report is to review and discuss the status of the Cable System in relation to State-of-the-Art of the Florida Systems. Franchisee may agree to make such technically and Commercially

Feasible improvements to its Cable System as may be requested by the City. If Franchisee believes that a particular improvement requested by the City is not Commercially Feasible for any reason, it will, upon written request, provide information to the City supporting its position. If the City and Franchisee disagree as to the Commercial Feasibility of a particular improvement, the City may provide notice stating that it believes that such an improvement is appropriate and may consider Franchisee's response during renewal.

(a) The City may, by written notice, require the Franchisee to provide the functional equivalent of such Cable System capacity or Cable Services that are not then available on the Cable System in the City but are available on the Florida Systems. Nothing herein shall be construed to require the Franchisee to employ any specific transmission technology or to carry any particular programming service.

(b) Upon receipt of such notice, the Franchisee shall implement the same or functional equivalent of such Cable System capacity or Cable Services within twelve (12) months of receipt of notice, or as otherwise agreed to by the City and the Franchisee. The City agrees to provide an extension of such twelve (12) month period upon written request of the Franchisee for good cause shown, including, but not limited to Force Majeure.

3. Franchisee's failure to upgrade the Cable System pursuant to this section shall result in imposition of fines to be paid by the Franchisee to the City in the amount of not less than one thousand dollars (\$1,000) per violation, per day, or part thereof that the violation continues after following the procedures set forth in Section 78-305 of the Ordinance and shall be considered in any renewal proceedings.

4. Should the Franchisee deliver the service(s) requested by the City pursuant to Subsection 2 above, and if such delivery involves an upgrade of the Cable System, the parties agree that the Term of this renewal Agreement shall be extended by the City for an additional period of not less than three (3) years, provided Franchisee continues to pay to the City a capital grant in the amount of \$90,000 per year for each of the three years, and not more than ten (10) years, depending on the nature of the upgrade and the cost thereof to Franchisee. The City and Franchisee shall enter into an agreement with respect to an extension for longer than three (3) years, which may include such other reasonable terms and conditions with respect to such extension period as are negotiated between the parties.

5. Subject to the foregoing, Franchisee shall use reasonable best efforts to provide subscribers in the City of West Palm Beach with any new Cable Services, as such Cable Services are defined by the FCC as of the Effective Date of this Agreement, at the same time or within a reasonable period thereafter as Franchisee offers any such new Cable Services in any other community in Palm Beach County. Notwithstanding anything to the contrary, the provisions of subsection (b)(3) above shall not apply to this subsection 5. Thirty (30) days prior to the commercial launch of any new Cable Service, as defined in this Section, in the County, the Franchisee shall provide notice to the City of the expected launch date for such new Cable Service in the City and the reason for such launch date.

Section 17. Access Channels and Facilities.

A. Access Channel Capacity. Franchisee shall provide to the City at least one (1) and a maximum of three (3) activated downstream Access Channels in accordance with this section and at least one (1) return line and a maximum of two (2) return lines on the Cable System

for the exclusive use of the City which the City shall use, in whole or in part, for video and audio services for non-commercial educational and/or governmental access use:

1. Franchisee hereby acknowledges that, as of the Effective Date, it provides to the City one (1) full-time Access Channel ("First Access Channel"). Franchisee shall deliver to the City a second channel for the City's exclusive use ("Second Access Channel") if, at any time, the First Access Channel is programmed at least eighty percent (80%) of the time from 8:00 a.m. to 12:00 p.m. for a period of six (6) consecutive weeks with non-character generated, non-duplicative, non-commercial programming. The Franchisee shall provide the exclusive use of the Second Access Channel within six (6) months of receipt of a written request from the City that will include detailed documentation evidencing the fact that the usage of the First Access Channel has met the criteria set forth above. Upon request of the City, a third channel ("Third Access Channel") shall be provided within six (6) months once the original two (2) City channels are utilized 80% of the time from 8:00 a.m. to 12:00 p.m. for a period of six (6) consecutive weeks with non character generated, non-duplicative, non-commercial programming (the acknowledgement of underwriters and sponsorships shall be considered non-commercial) and the City has provided detailed documentation evidencing the fact that the usage of the First Access Channel and the Second Access Channel has met the criteria set forth above. The Second Access Channel may, at the City's option, be activated from City Hall, or from such other location within the City as specified by the City.

2. Franchisee shall carry the government Access Channel and education Access Channel from Palm Beach County (the "County Channels") on the Cable System until such time as the City has met the criteria for the Second Access Channel or the Third Access Channel, at which time Franchisee shall delete the County Channels and provide the Second Access Channel or

the Third Access Channel to the City in accordance with the terms of this Agreement. However, the City may elect to carry County programming in all or in part on City Access Channels and such programming shall be included as usage under Subsection 1 above as long as such programming is not duplicative of County programming carried on an entire County Channel that is delivered to Subscribers within the City. At no time shall Franchisee be obligated to carry more than a total of three (3) Access Channels, whether such channels are the County Channels or the City's First, Second or Third Access Channel. In accordance with federal law and Section 78-296 of the Ordinance, Franchisee will be entitled to use any PEG Access Channel capacity for the provision of other services at any time such channel capacity is not being used for the designated City or County PEG access purposes or is not meeting the usage requirements as provided in this Agreement .

3. Franchisee shall cablecast live all City Commission Meetings over the Cable System.

4. The Franchisee shall not be responsible for the operation, management and administration of PEG Access, or for providing programming or technical support thereto, except as otherwise provided in this section.

5. Franchisee's Cable System shall be configured so that any programming delivered to the Cable System on any return line required hereunder may be delivered downstream on the Cable System on any of the activated downstream Access Channels to all Subscribers hereof, as determined and directed by the City from the access facilities and equipment located at City Hall, or from such other location within the City designated by the City, for a total of two return lines.

6. Franchisee shall provide all necessary headend and Cable System electronic and distribution equipment so that any programming transmitted from City Hall and such other origination location designated by the City in accordance with this Agreement may be transmitted to all Subscribers on any of the Access Channels provided pursuant to this Section hereof. City Hall and the other origination location designated pursuant to Section 17(a) hereof will be linked to the headend by the most technically feasible and cost-effective means, as reasonably approved by the City.

7. Franchisee agrees that all Access Channels will be provided to Subscribers on the Cable System as a part of the lowest tier of Cable Service and that, if programming information is supplied to Franchisee by the City in writing, Franchisee will use its best efforts to publicize such programming on the Access Channels as a part of any ordinary printed program listings it creates and provides to Subscribers.

8. Franchisee agrees that any and all Access Channels provided pursuant to this Section 17 shall be provided on the same channel location to all Subscribers in the City. If Franchisee elects to change the channel location of any City Access Channel, Franchisee shall, when possible, provide no less than ninety (90) days notice to the City and thirty (30) days notice to Subscribers prior to the change. Franchisee shall advertise any such change to all Subscribers via the Cable System with public service announcements and shall place a bill message on Subscribers' monthly statements.

9. Failure on the part of the Franchisee to provide the PEG channels required by Section 17(A) of this Agreement may result in the imposition of liquidated damages in the

amount of one thousand dollars (\$1,000) per day per violation after following the procedures set forth in Section 78-305 of the Ordinance.

B. Access Capital Grant

1. Consistent with applicable federal law, the Franchisee shall pay the City a capital grant for PEG equipment, facilities and other capital requirements in the amount of one million one hundred ninety thousand (\$1,190,000) dollars to be paid in accordance with the following schedule (the "Capital Grant"). Franchisee shall pay the Capital Grant in the following installments:

(a) One hundred thousand (\$100,000) dollars on the Effective Date of this Franchise;

(b) One hundred thousand (\$100,000) dollars on or before March 31, 2005;

(c) Starting on the first anniversary date of this Franchise (October, 2005), and every anniversary date thereafter through the eleventh anniversary date of this Franchise (October, 2015), Franchisee shall pay the sum of ninety thousand (\$90,000) dollars to the City.

2. The City acknowledges that under FCC rules, the Capital Grant may be passed through to Subscribers. Franchisee agrees that if the Capital Grant is passed through to Subscribers, such pass through shall apply to all Subscribers, including those Subscribers who receive Cable Service pursuant to bulk agreements, on an equitable basis. Should Franchisee elect to pass through the Capital Grant, Franchisee shall be entitled to recover that portion of the Capital Grant set forth in subsections (a) and (b) above during the first year of this Agreement and shall be entitled to recover the remaining annual payments set forth in subsection (c) above annually.

3. The City may cablecast character generated information on the First Access Channel from City Hall at any time of its choosing.

4. Franchisee hereby agrees that the Capital Grant provided by Franchisee pursuant to this Section 17 constitutes capital costs which are required by the Agreement to be incurred by Franchisee for public, educational, or governmental access facilities within the meaning of Section 622(g)(2)(c) of the Communications Act, 47 U.S.C. §542(g)(2)(C); Such grant shall not constitute a Franchise Fee or tax within the meaning of the Communications Act, state law, including but not limited to, the Florida Communications Services Tax, the Ordinance, or this Agreement as of the Effective Date of this Agreement.

Section 18. Service to Public Buildings.

A. Notwithstanding any other provision of the Ordinance, Franchisee shall provide one cable drop per location (including installation) without charge to each government building in the Franchise Area that is receiving Cable Service on the Effective Date of this Agreement or any such building that is located within one hundred twenty-five (125) feet of Franchisee's coaxial distribution plant, whether now in existence or constructed during the term of this Agreement. Such service shall, at minimum, include the basic and expanded basic tiers, or the equivalent comprising the next level of programming service above the lowest tier of Cable Service.

Service extensions beyond 125 feet shall be at the City's expense based upon Franchisee's actual costs.

B. Failure on the part of the Franchisee to provide the cable drop and Cable Service required by Section 18(A) of this Agreement may result in the imposition of liquidated

damages in the amount of five hundred dollars (\$500) per day per violation after following the procedures set forth in Section 78-305 of the Ordinance.

Section 19. Service to Schools.

A. Notwithstanding any other provision of the Ordinance, Franchisee shall provide, without charge, one cable drop per location (including installation) and the basic and expanded basic tiers (or such equivalent comprising the next level of programming service above the lowest tier) of Cable Service to all accredited K-12 schools within the City that are located within one hundred twenty-five (125) feet of Franchisee's coaxial distribution plant, whether now in existence or constructed during the term of this Agreement. Service extensions beyond 125 feet shall be at the respective school's expense based upon Franchisee's actual costs.

B. Franchisee shall make arrangements for each school to receive school materials, to the extent available, for teachers that explain the educational applications of the Franchisee's Cable Services and programming offered on the Cable System. The materials will be provided to all connected schools at no cost.

C. Franchisee has established a voluntary initiative to provide, upon request, cable internet service to all State accredited K-12 schools within the City which receive Cable Service. Franchisee intends to provide each of such schools with one outlet of unlimited Internet access, including the necessary cable modem.

D. The costs related to this Section 19 shall not be offset against Franchise Fees or taxes or passed through to Subscribers.

Section 20. Commercial Leased Access. Franchisee shall provide commercial leased Access Channels as required by applicable law.

Section 21. Emergency Use of Facilities.

A. Franchisee shall at minimum comply with all FCC rules on emergency use of facilities.

B. Franchisee shall provide standby power generating capacity to the Cable System headend capable of providing at least two (2) hours of emergency power.

Section 22. Lock-out Devices. Franchisee shall make available at reasonable charge to any residential Subscriber, upon the request of such Subscriber, a "parental guidance" or "lock-out" device which shall permit the Subscriber, at his or her option, to eliminate the audio and visual transmissions from any channel reception to the extent technically feasible.

Section 23. Line Extension Policy. Upon request and payment of all applicable charges, and provided that the requesting person gives Franchisee access to his/her premises in order to furnish, maintain and continue to offer Cable Service to that person, Franchisee shall, throughout the term of this Agreement, promptly furnish, maintain, and continue to provide all Cable Services distributed over the Cable System to any person at his/her place of residence at which Franchisee has the right to install equipment and located within the City where such residential location is not receiving Cable Service by any other franchised cable operator, provided that the number of actual residential dwelling units to be passed by any requested extension equals or exceeds twenty (20) homes per mile as measured from the nearest activated point on the Cable System to the furthest location to be served by the requested extension.

Section 24. Cable Home Wiring Commitments. Franchisee shall comply with all FCC rules regarding cable home wiring, as amended from time to time.

Section 25. Franchise Fee.

A. As of the Effective Date hereof, the Florida Communications Services Tax Act preempts Section 78-297 of the Ordinance. If, however, the Florida Communications Services Tax Law is amended or repealed so that a local franchising authority is allowed to impose and collect Franchise fees, then forty five (45) days after the effective date of any such statutory amendment or repeal, this section of the Agreement will become effective or at such time as stated in said amendment or repeal of the Florida Communications Services Tax Law. Unless otherwise provided by law, Franchisee shall collect and remit Franchise fees for the entire period following the effective date of the aforementioned change in law, even if some collection and payment must be done in arrears to allow for changes to the billing process. The intent of this section is to ensure the City is not deprived of any Franchise fees to which it would otherwise be entitled following any change in applicable state law.

1. Franchisee shall pay the City a Franchise fee of five percent (5%) of Franchisee's Gross Revenues derived from the operation of the Cable System to provide Cable Services in the City. Franchise fee payments shall be paid on a quarterly basis (January 1, April 1, July 1 and October 1) no later than forty-five (45) days after the end of each quarter. Each payment shall be accompanied by a detailed report to the City showing the basis of the computation.

2. The City shall have the option of increasing the Franchise fee to the maximum permitted by law following a public hearing where both the Franchisee and public are allowed to comment on the impact of the higher fee, and a vote by the City Commission adopting a resolution to impose the higher fee. Such change shall take effect on the next available billing cycle in which the higher charge may be placed on Subscribers' bills.

3. Upon reasonable prior written notice, during Normal Business Hours , as defined in the Ordinance, , at Franchisee's principal business office in Palm Beach County, the City shall have the right to inspect the Franchisee's financial records used to calculate the Franchisee fees; provided, however, such actual fees are subject to the applicable statute of limitations.

4. Upon completion of any such inspection by the City, the City shall provide to the Franchisee a final report setting forth the City's findings in detail, including any and all substantiating documentation. The Franchisee shall have thirty (30) days from the receipt of the report to provide the City with a written response, including any substantiating documentation. Any "Finally Settled Amount(s)" due to the City as a result of such inspection shall be paid to the City by the Franchisee within thirty (30) days from receipt of written notice of the acceptance of such Finally Settled Amount from the City. For purposes of this section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Franchisee as a result of such inspection. If the parties cannot agree on a "Finally Settled Amount", the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law. Once the parties agree upon a Finally Settled Amount and such amount is paid by the Franchisee, the City shall have no further rights to audit or challenge the payment for that period unless otherwise provided by applicable law.

B. Unless otherwise mandated by applicable law, Franchisee expressly agrees that: (i) the Franchise fee payments to be made pursuant to this section shall not be deemed to be in the nature of a tax; (ii) such Franchise fee payments shall be in addition to any and all taxes of a general applicability and not applicable solely to cable television operations within the City or other

fees or charges which Franchisee shall be required to pay to the City or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of Franchisee; (iii) Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise fee payments from or against any of said City taxes or other fees or charges of general applicability which Franchisee is required to pay to the City, except as agreed herein or required by law; (iv) Franchisee shall not apply nor seek to apply all or any part of the amount of said Franchise fee payments as a deduction or other credit from or against any of said City taxes or other fees or charges of general applicability, each of which shall be deemed to be separate and distinct obligations of Franchisee; (v) Franchisee shall not apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges of general applicability as a deduction or other credit from or against any of its Franchise fee obligations, each of which shall be deemed to be separate and distinct obligations of Franchisee.

Section 26. Reports and Records. Upon reasonable prior written request of the City Administrator or his/her designee, Franchisee shall furnish the City with all of the information as required under Section 78-298 of the Ordinance, except those reports required by Section 78-298 (a)(4) and (b)(2) (unless and until the Florida Simplified Communications Tax Act is properly amended or repealed). Franchisee hereby expressly agrees to implement and maintain such practices and procedures as may be necessary to comply with said obligations.

Section 27. Right to Inspect Financial Records and Facilities.

A. Franchisee shall maintain a complete set of books and records, including plans, contracts, engineering, statistical, customer and service records at a location in Palm Beach

County, as required by the Ordinance, and accounting and financial records if the Florida Simplified Communications Tax Act is properly repealed, unless prohibited by applicable law.

B. Throughout the term of this Agreement, the Franchisee agrees that upon receipt of advance written notice from the City, the Franchisee shall permit any duly authorized representative of the City to review such of the Franchisee's books and records regarding the operation of the Cable System and the provision of Cable Service in the City, as are reasonably necessary to monitor Franchisee's compliance with the provisions of the Ordinance and this Agreement at the Franchisee's business office in Palm Beach County, during Normal Business Hours and without unreasonably interfering with Franchisee's business operations. Such notice shall specifically reference the subsection of the Agreement that is under review so that the Franchisee may organize the necessary books and records for easy access by the City. Such books and records shall include, without limitation, any records required to be kept in a public file by the Franchisee pursuant to the rules and regulations of the FCC. The Franchisee shall not be required to maintain any books and records for Agreement compliance purposes longer than five (5) years, except for written service complaints, which shall be kept for three (3) years.

C. The City shall accord all books and records that it inspects under this section the degree of confidentiality such books and records are entitled to under federal and state law. To the extent Franchisee considers any books or records that it is required to produce to be confidential or otherwise protected from public disclosure, Franchisee shall designate which documents it views as confidential and proprietary.

D. Franchisee hereby agrees that the City shall have the right to inspect Franchisee's facilities and property during Franchisee's Normal Business Hours and upon reasonable notice.

Section 28. Customer Service Requirements. Franchisee agrees to comply with, and to implement and maintain any practices and procedures that may be required to monitor compliance with each of the customer service requirements set forth in Section 78-299 of the Ordinance, and as such requirements may be lawfully amended in accordance with the terms of the Ordinance or this Agreement.

Section 29. Late Fees. Pursuant to Section 78-299 of the Ordinance, Franchisee hereby agrees that any late charge imposed on Subscribers for unpaid bills shall not exceed Five Dollars (\$5.00). Such fee may be deemed to represent Franchisee's reasonable administrative costs.

Section 30. City Purchase of Cable System. The City may, upon the recommendation of the City Administrator and the approval of the Commission, acquire ownership of and operate Franchisee's Cable System in accordance with the Ordinance and applicable state and federal law.

Section 31. Modification of Agreement. Franchisee shall file an Application with the City for any modification of this Agreement in accordance with the federal Communications Act and Section 78-288 of the Ordinance.

Section 32. Transfer of Agreement. Franchisee shall file an Application to transfer its Franchise Agreement or to change ownership or control of Franchisee or its Cable System in full compliance with Sections 78-288 and 78-304 of the Ordinance. No Transfer shall occur without prior approval of the City Commission, which approval shall not be unreasonably withheld. Franchisee shall be subject to liquidated damages in the amount of one thousand five hundred dollars

(\$1,500) per day for failure to receive such consent of the City for a transfer or change of control; provided, however, that no such liquidated damages shall be owed if the City's denial of consent is unlawful or unreasonable.

Section 33. Procedures for Requesting Approval of Transfer. In compliance with the requirements set forth in Sections 78-288 and 78-304 of the Ordinance, and subject to Section 32 above, the following procedures shall be followed by Franchisee in requesting the City's consent to a transfer, other than a pro forma transfer, of this Agreement or to transfer control of the Agreement or Franchisee. However, the requirement to obtain consent for a pro forma transfer shall not apply to transactions solely for the purpose of restructuring, recapitalization or refinancing which do not change the effective control of the Franchisee, as long as the Franchisee provides reasonable notice to the City of such transaction.

A. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a transfer, Franchisee shall submit to the City a completed Application for approval of the transfer. Such Application shall include the following:

1. A statement of the reason for the contemplated transfer.
2. The name, address and telephone number of the proposed transferee.
3. A detailed statement of the corporate or other business entity organization of the proposed transferee, including but not limited to the following:

(a) A detailed and complete audited financial statement of the proposed transferee for the three (3) fiscal years immediately preceding the date of the request for transfer approval, prepared by a certified public accountant if audited statements were made, or a letter or other acceptable evidence in writing from a duly authorized officer of the proposed

transferee setting forth a clear and accurate description of the amount and sources of funding for the proposal transaction and its sufficiency to provide whatever capital and operating funds shall be required by the proposed transferee to construct, install, rebuild, maintain and operate the proposed Cable System in the City. If the corporate or business entity organization of the proposed transferee has not been in existence for a full three (3) years, the proposed transferee shall submit a certified financial statement for the period of its existence.

(b) A description of all previous experience of the proposed transferee in operating Cable Systems and providing Cable Services or related or similar services, including a statement identifying, by place and date, any other cable television licenses or franchises awarded to the proposed transferee, its parent, subsidiaries, or Affiliates in the State of Florida.

(c) Upon written request from the City and if such pro forma financial plan has been prepared, a detailed pro forma financial plan describing for each remaining year of the Franchise, the projected number of Subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and statement of sources and uses of funds. Where the transfer is part of a larger transaction and such information is not prepared for the single Cable System in the City, the proposed transferee may provide such information on a consolidated basis including the Cable System in the City, but shall provide information on the size of the City System, in terms of number of Subscribers, relative to the transaction, so that pro rata estimates may be made.

(d) If applicable, a detailed description of the proposed plan of operation of the proposed transferee, which shall include, but not be limited to the following:

i. A detailed map indicating all new areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the new areas to be served.

ii. For informational purposes a statement or schedule setting forth all anticipated changes, if any, to the proposed classifications of Subscriber rates and charges for each of any said classifications, including installation charges, service charges, special, extraordinary, or other charges.

4. Upon request, the terms and conditions of the agreement between the transferor and proposed transferee relating to the operation of the Cable System in the City.

5. A statement of acceptance signed by a duly authorized officer of the proposed transferee, if such transferee will be the holder of the Franchise, of all of the terms and conditions of the Ordinance and this Agreement. If such transferee is not the holder of the Franchise, such transferee will sign a guarantee of compliance by the Franchisee with this Agreement.

6. A statement of acceptance of all liabilities arising under the existing Franchise whether known or unknown.

7. A plan of compliance and guarantee to cure any outstanding violations of the Ordinance and this Agreement.

B. The names, business addresses, state of residence and country of citizenship of all general partners and/or corporate officers and directors of the proposed transferee.

C. The names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling, or being entitled to have or control ten percent (10%) or

more of the ownership of the proposed transferee and the respective ownership share of each such person or entity.

Section 34. Dispute Resolution Procedures.

A. Except as provided in Subsection B below, any disputes between the City and Franchisee under this Agreement shall be handled in accordance with Sections 78-299 (t) and (u), 78-305 and 78-306 of the Ordinance.

B. Either party may seek mediation and the party seeking mediation shall provide written notice to the other party. If both parties consent to mediation, the mediator, who shall have expertise in cable-related matters, shall be selected by agreement between the parties.

1. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

2. The mediation will be treated as settlement discussions and confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

3. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

Section 35. Renewal of Agreement. The provisions of Section 626 of the Communications Act and Section 78-303 of the Ordinance shall govern any and all proceedings to renew this Agreement. In the event of a conflict between the Communications Act and the Ordinance, the Communications Act shall control. If either Franchisee or the City decides to initiate a formal renewal process in accordance with Section 626(a)-(g) of the Communications Act,

47 U.S.C. § 546(a)-(g), both the Franchisee and the City must comply with each of the requirements in the Communications Act as well as the additional requirements set forth in the Ordinance.

Section 36. Rates.

A. Nothing in the Ordinance or this Agreement shall prohibit the City from regulating rates for Cable Service, installation, disconnection, and equipment to the full extent permitted by and consistent with state and federal law.

B. Pursuant to the Ordinance, Franchisee shall not unlawfully discriminate with respect to Cable Service rates that it charges throughout the City, as defined by applicable law.

Section 37. Enforcement Remedies.

A. In addition to any other remedies available at law or equity, except as otherwise specifically provided in the Ordinance and Section 34 of this Agreement, the City may impose fines for any violation of the Ordinance, or this Agreement, and/or other remedies as follows:

1. For failure to provide data, documents, reports or information as required by this Agreement in a timely manner or as requested by the City consistent with FCC rules and regulations, Franchisee shall pay fifty dollars (\$50.00) per violation for each day the violation continues.

2. Unless otherwise provided herein, for all other violations of this Agreement or the Ordinance, except those violations of the customer service standards set forth in Section 78-299 of the Ordinance that are measured on a quarterly basis, the fines shall be one hundred dollars (\$100.00) per violation for each day the violation continues for thirty (30) days. If the violation continues beyond thirty (30) days, a fine in the amount of two hundred dollars (\$200.00) per violation per day shall be imposed. If the violation continues beyond sixty (60) days, a

fine shall be imposed in the greater of the amount set forth in the Ordinance or two hundred dollars (\$200.00) per violation per day.

B. A violation will be deemed to have occurred when the City provides written notice to Franchisee of the violation in accordance with the procedures set forth in the Ordinance and this Agreement.

C. This Franchise is subject to revocation pursuant to Section 78-306 of the Ordinance for any of the reasons set forth therein. In the event the City exercises its right to revoke the Franchise, the procedures set forth in the Ordinance shall apply. After exhaustion of all such proceedings, Franchisee shall have the right to appeal the decision of the City Commission to a court of competent jurisdiction in Palm Beach County, Florida.

D. The Franchisee shall not be held in default under, or in noncompliance with the provisions of the Agreement or the Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Franchisee to anticipate or control.

Section 38. Area Wide-Interconnection.

A. The Cable System shall be interconnected with other contiguous area cable systems that are owned and operated by Franchisee or an Affiliate.

B. Franchisee shall use its best efforts to interconnect the PEG Access Channels of the Cable System with any other contiguous cable system not owned or operated by Franchisee or an Affiliate of Franchisee upon the directive of the City and in accordance with Section 78-294 of the Ordinance. Interconnection of channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. Each individual operator of such systems shall pay for its

own cost of constructing and maintaining the interconnection up to the demarcation point. Such interconnection shall not increase the total number of PEG Access Channels required under Section 17 of this Agreement.

C. Subject to subsections A and B above, Franchisee shall make all reasonable efforts to cooperate with any designated access organization, interconnection corporation, regional interconnection authority or City, County, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the Franchise Area.

Section 39. Validity.

A. By execution of this Agreement, the City and the Franchisee each represents and warrants to the other its respective authority and power to enter into this Agreement. The City and the Franchisee each represents, warrants and covenants to the other that the undersigned elected official (as to the City) or officer (as to the Franchisee) has been duly authorized to execute this Agreement such that this Agreement has been validly entered into by the respective party, and that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof.

B. If any part, section, subsection, or other portion of this Agreement or any application thereof to any Person or circumstance is declared void, unconditional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Agreement, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

Section 40. Written Notice of Acceptance. Upon adoption and as of the date of the Commission resolution approving this Agreement, Franchisee shall provide to the City written acceptance of all the terms and conditions of this Agreement. Franchisee's failure to comply in full with this section shall render this Agreement null and void with no further action by the City, unless the City Administrator agrees in writing or the Commission takes action to extend such period.

Section 41. Notice. Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be deemed as having been given when mailed by United States registered or certified mail (return receipt requested), postage prepaid, to the other parties at the addresses stated below or at the last changed address given by the party to be notified as hereinafter specified:

(a) If to Adelphia: Adelphia Cablevision of West Palm Beach
1100 Northpoint Parkway, Suite 100
West Palm Beach, FL 33407
Attention: Regional Vice President, Law and Public Policy

With a copy to:

Adelphia Communications
5619 DTC Parkway
Greenwood Village, CO 80111
Attention: Vice President, Law and Public Policy

(b) If to City: City of West Palm Beach
200 Second Street
West Palm Beach, FL 33401
Attention: City Administrator

With a copy to:

City of West Palm Beach
200 Second Street
West Palm Beach, FL 33401
Attention: City Attorney

Section 42. Entire Agreement. This Agreement and the Ordinance, to the extent set forth in this Agreement, set forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matters of this Agreement. All prior and contemporaneous conversations, negotiations, agreements, representations, performances, covenants and warranties with respect to the subject matter hereof are waived and are superseded hereby and thereby.

Section 42. Execution in Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be
duly executed as of the day and year first above written.

CITY OF WEST PALM BEACH, FLORIDA

By: [Signature]
Presiding Officer

Attest: [Signature]
City Clerk

ADELPHIA CABLEVISION OF WEST PALM BEACH IV, LLC

By: _____

Its: _____

Last printed 10/15/04

Office of the City Attorney
Approved as to form
And legal sufficiency
By: [Signature]
Date: 10/19/04

FRANCHISE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions.....	2
Section 2. Grant of Franchise.....	3
Section 3. Term of Franchise	3
Section 4. Non-Exclusive Franchise	4
Section 5. Franchise Subject to Communications Act, State Law and City Code.....	4
Section 6. Franchisee Subject to Other Laws, Police Power	5
Section 7. Reservation of Rights.....	5
Section 8. Insurance	5
Section 9. Indemnification of the City	6
Section 10. Security Fund	6
Section 11. Construction Bond	8
Section 12. Use of Streets; Use of City Private Property.....	8
Section 13. System Rebuild	9
Section 14. Institutional Network	10
Section 15. Minimum Facilities and Services.....	11
Section 16. Technological Improvements to System.....	12
Section 17. Access Channels and Facilities	15
Section 18. Service to Public Buildings.....	19
Section 19. Service to Schools.....	20
Section 20. Commercial Leased Access	20

Section 21.	Emergency Use of Facilities	20
Section 22.	Lock-out Devices	21
Section 23.	Line Extension Policy	21
Section 24.	Cable Home Wiring Commitments	21
Section 25.	Franchise Fee	21
Section 26.	Reports and Records	24
Section 27.	Right to Inspect Financial Records and Facilities.....	24
Section 28.	Customer Service Requirements.....	25
Section 29.	Late Fees	25
Section 30.	City Purchase of Cable System	26
Section 31.	Modification of Agreement.....	26
Section 32.	Transfer of Agreement.....	26
Section 33.	Procedures for Requesting Approval of Transfer	26
Section 34.	Dispute Resolution Procedures	29
Section 35.	Renewal of Agreement.....	31
Section 36.	Rates.....	31
Section 37.	Enforcement Remedies	32
Section 38.	Area Wide-Interconnection.....	32
Section 39.	Validity.....	32
Section 40.	Written Notice of Acceptance.....	33
Section 41.	Notice.....	33
Section 42.	Execution in Counterpart.....	34

EXHIBIT A
TO

**FRANCHISE AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH,
FLORIDA AND ADELPHIA CABLEVISION OF WEST PALM BEACH IV, LLC**

**As of the Effective Date of this Franchise Agreement, Adelphia (its parents, subsidiaries
and affiliates) own and operate cable systems in the following counties in the State of
Florida**

Alachua County
Brevard County
Broward County
Citrus County
Gilchrist County
Glades County
Hendry County
Hillsborough County
Levy County
Marion County
Martin County
Miami-Dade County
Nassau County
Okeechobee County
Orange County
Osceola County
Palm Beach County
Polk County
St. Lucie County

October, 2004